

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 HONORABLE DAVID O. CARTER, JUDGE PRESIDING

4 - - - - -

5
6 UNITED STATES OF AMERICA, et)
7 al.,)
8 Plaintiffs,) **CERTIFIED**
9 vs.) No. 2:90-CV-03122-DOC
10 MONTROSE CHEMICAL CORPORATION OF) Item Number 2
11 CALIFORNIA, et al.,)
12 Defendants.)
13 _____)
14 And related cross-actions.)
15 _____)

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 Hearing on Motions [3055], [3057], [3062], [3063]

18 Santa Ana, California

19 Tuesday, September 28, 2021

20
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22 Federal Official Court Reporter
23 United States District Court
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25 Santa Ana, California 92701
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SANTA ANA, CALIFORNIA, TUESDAY, SEPTEMBER 28, 2021

Item Number 2

(8:53 a.m.)

8:53 4 THE COURT: Good morning. How is everyone?

8:53 5 I know you from prior meetings, but that was quite

6 a while ago. And Judge Standish has been, I know, in

7 constant communication and relaying information to me.

8:53 8 And before we start, I want to thank all of you

9 for your input to the magistrate judge. It's very much

10 appreciated. After 30 years of litigation, it's hopefully a

11 productive session today.

8:54 12 Judge Standish could not join us. She's been on

13 the front line with all of you and then has been conveying

14 information to the Court. And she may be able to join us,

15 if necessary; but hopefully all the questions will be

16 revolved today.

8:54 17 So, Counsel, if you would be so kind -- this is

18 now called to order, and it's entitled United States of

19 America and the State of California v. Montrose Chemical

20 Corporation, et al., with numerous parties, of course, who

21 can identify themselves on the record.

8:55 22 On behalf of the plaintiff in this matter, just

23 remain seated. Use the microphone, if you will. Bring it

24 down towards you.

8:55 25 The locations you sit at were cleaned last evening

1 by the custodians, but when you leave today -- we have other
2 matters -- would you just kindly clean the area. 'Cause I
3 don't want my staff coming over and doing that. Also you're
4 welcome to socially distance yourself. I want you to be
5 comfortable. But just take care of that area because we
6 can't. Otherwise, I'm sending Karlen out to do that and
7 then we've got other parties. So once a day isn't
8 sufficient.

08:55 9 So, Counsel, on behalf of the government, please.

08:55 10 **APPEARANCES**

08:55 11 MS. GITIN: Good morning, Your Honor. My name is
12 Deborah Gitin, and I represent the United States. I'm with
13 the U.S. Department of Justice Environmental Enforcement
14 Section, on behalf --

08:55 15 THE COURT: And I spoke to you, as well the
16 parties involved, I believe, between Christmas, New
17 Year's --

08:55 18 MS. GITIN: That's correct, Your Honor.

08:55 19 THE COURT: -- to inform all parties of that
20 conversation during the holiday season. I want to thank you
21 for your input.

08:56 22 Counsel.

08:56 23 MS. HEY: Good morning, Your Honor. Megan Hey.
24 I'm with the California Attorney General's Office
25 representing the California Department of Toxic Substances

1 Control.

08:56 2 THE COURT: Pleasure.

08:56 3 And the gentleman with you?

08:56 4 MS. GITIN: And also present with me is Dustin
5 Minor. He's agency counsel, Assistant Regional Counsel at
6 EPA.

08:56 7 THE COURT: Okay.

08:56 8 Counsel, do you want to begin with Montrose?

08:56 9 MR. RICHARDSON: Good morning, Your Honor. Kelly
10 Richardson with Latham & Watkins for Montrose.

08:56 11 THE COURT: And you represent?

08:56 12 MR. RICHARDSON: Montrose Chemical.

08:56 13 MR. RYAN: Good morning, Your Honor. Jake Ryan of
14 Latham & Watkins for Montrose.

08:56 15 THE COURT: All right.

08:56 16 MR. GIBSON: Good morning, Your Honor. Ben Gibson
17 with Latham & Watkins for Montrose.

08:56 18 MR. HSIAO: Winston Hsiao for Defendant
19 TFCF America, Inc.

08:56 20 THE COURT: All right. Thank you.

08:56 21 MR. ALLEN: Good morning, Your Honor. Jose Allen
22 for Defendant TFCF America Inc.

08:57 23 MR. DONALD: Good morning, Your Honor. Wylie
24 Donald, McCarter & English, representing Stauffer Management
25 Company LLC, for itself, and as litigation agent for

1 Defendant Bayer CropScience, Inc.

08:57 2 THE COURT: Okay.

08:57 3 Are there any persons present in the Court -- and
4 the Court took the added precaution of sending out an
5 email -- with Del Amo today?

08:57 6 MS. GITIN: No, Your Honor.

08:57 7 THE COURT: Also the -- some of the state agencies
8 involved, such as the Water Board?

08:57 9 MS. HEY: No, Your Honor.

08:57 10 THE COURT: Okay.

08:57 11 Well, then, Counsel, why don't you make your
12 presentation, but let me briefly summarize the 30 years of
13 litigation as follows:

08:57 14 **INITIAL REMARKS BY THE COURT**

08:57 15 THE COURT: Consent decrees have been lodged with
16 the Court, and put out for public comment in the Federal
17 Register. The plaintiffs have considered these comments and
18 have moved the Court to enter all three consent decrees.

08:57 19 These unopposed motions, of which defendants have
20 joined, have been submitted to this Court and are ripe for
21 the Court's consideration and potential approval.

08:58 22 There are three consent decrees before the Court:

08:58 23 The Q&M [sic] consent decree. This is a partial
24 consent decree which commits the defendants, together with
25 one other settling defendant, who's not a party --

08:58 1 And would you identify yourself, Counsel, once
2 again and the entity you represent.

08:58 3 MR. DONALD: Bayer CropScience and Stauffer
4 Management Company.

08:58 5 THE COURT: And with TC...?

08:59 6 MR. ALLEN: TFCF America, Inc.

08:59 7 THE COURT: Okay. Thank you.

08:59 8 -- in this case, and TC- -- or TFCF, who, in a
9 sense, is not the party; is that correct?

08:59 10 MS. GITIN: TFCF America is a party to the case.
11 You may've known them as Fox or 21st Century Fox.

08:59 12 There's one settling defendant in that first
13 consent decree. The O&M consent decree, who's not a party
14 to this case.

08:59 15 THE COURT: Who that?

08:59 16 MS. GITIN: Jones -- JCI Jones Chemicals.

08:59 17 THE COURT: Thank you very much.

08:59 18 MS. GITIN: I don't believe they have counsel here
19 today.

08:59 20 THE COURT: And this is to perform long-term
21 operation and maintenance, the Q&M [sic] of the
22 chlorobenzene plume groundwater remedy at the dual site
23 operable unit of the Montrose site.

08:59 24 And you've referred to that consistency --
25 consistently throughout the years as "dual" because the

1 groundwater contamination stems from both the Montrose site
2 and the adjacent superfund site; correct?

09:00 3 MS. GITIN: That's correct, Your Honor.

09:00 4 There are two superfund sites in the area. The
5 Montrose site, which is the subject of this litigation, and
6 the Del Amo site, which is the subject of separate
7 litigation --

09:00 8 THE COURT: And the --

09:00 9 MS. GITIN: -- at the dual site.

09:00 10 The only thing I wanted to correct is it's the
11 "O&M," rather than Q&M. I'll try to stay as light as I can
12 on the acronyms.

09:00 13 THE COURT: Did I say "Q"? I'm sorry. I meant
14 "O."

09:00 15 MS. GITIN: "O&M" is for Operation and
16 Maintenance.

09:00 17 THE COURT: Of course.

09:00 18 Defendants have already constructed or performed
19 construction of this remedy pursuant to a 2012 consent
20 decree entered in this case, which you've referred to as the
21 Construction Consent Decree, which is ECF Number 2735, and
22 Paragraph 7 of the stipulation.

09:01 23 The O&M Consent Decree is valued at an estimated
24 \$52.6 million. And defendants will also pay \$4 million to
25 the United States and \$177,265.36 to DTSC for past response

1 costs at the dual site. The O&M Consent Decree was lodged
2 with this Court on August 6th of 2020, which is ECF
3 Number 2987.

09:01 4 And I want you to correct me in case the
5 statements I'm making from our research is incorrect.

09:01 6 There's been one public comment received and the
7 plaintiffs moved to enter the O&M Consent Decree on
8 April 7th of 2021.

09:02 9 MS. GITIN: Your Honor, one small correction.

09:02 10 There were two comments received on that consent
11 decree.

09:02 12 THE COURT: That's correct. You're absolutely
13 right. And we'll go through those in just a moment.

09:02 14 MS. GITIN: Certainly.

09:02 15 THE COURT: Defendant submitted a joinder on
16 April 8th, 2021, in ECF Number 3057. And plaintiffs noticed
17 a May 17, 2021, motion hearing for the O&M Consent Decree,
18 but the Court reset that hearing date "to be determined" and
19 then you gave me three dates, and I chose the latter date in
20 the September dates you'd given me.

09:03 21 In addition, the same dates, you submitted the
22 DNAPL Consent Decree.

09:03 23 This partial consent decree commits the defendants
24 to perform the cleanup of the DNAPL, which is the Dense
25 Nonaqueous Phase Liquid contamination that resides primarily

1 under the footprint of the former Montrose plant property at
2 an estimated cost of \$25 million.

09:03 3 Defendants will also pay \$347,000 to the
4 United States, and \$61,798.11 to DTSC for certain past
5 response costs related to this portion of the site.

09:04 6 The DNAPL Consent Decree was lodged with the Court
7 on January 15th of 2021, and that should be ECF Docket
8 Number 3050. And no public comments were received at that
9 time. And plaintiffs moved to enter the DNAPL Consent
10 Decree on April 7, 2021, in the same motion in which
11 plaintiffs moved to enter the O&M Consent Decree. But now I
12 do believe we have public comments, don't we?

09:04 13 MS. GITIN: We have two public comments on the
14 first consent decree, the O&M Consent Decree, but no public
15 comments on the second one.

09:04 16 THE COURT: And plaintiffs noticed this, of
17 course, for May 17th. And I chose to bring you together at
18 one time, to save the travel expenses and inconvenience.
19 That's why I had all three consent decrees.

09:04 20 Then, on the Southern Pathway Consent Decree, this
21 partial consent decree commits defendants to perform the
22 remedial investigation and feasibility study in the Southern
23 Pathway portion of the site. This is also known as the
24 Historic Stormwater Pathway South. This is the area of the
25 site for which liability and costs have been disputed. And

1 this was at issue in the now-vacated trial between the
2 parties.

09:05 3 Under the investigation and study completed under
4 the Southern Pathway Consent Decree, it is unknown whether a
5 remedy for the Southern Pathway will be required. That's
6 why the impetus to at least begin this process that's been
7 in abeyance for decades.

09:05 8 MS. GITIN: Correct, Your Honor.

09:05 9 THE COURT: And this work is valued at an
10 initially estimated \$518,000. Defendants will also pay
11 \$3,750,000 to the United States and \$250,000 to DTSC for
12 past costs primarily related to this portion of the site.

09:06 13 The Southern Pathway Consent Decree was lodged
14 with the Court on May 12, 2021, which should be ECF Docket
15 Number 3054. There were public comments received. And the
16 plaintiffs have moved to enter the Southern Pathway Consent
17 Decree on June 3rd, 2021, in ECF Number 3062. Defendants
18 submitted a joinder on June 16, 2021, in ECF Number 3063.
19 And plaintiffs noticed a July 12th, 2021 motion hearing
20 initially for the Southern Pathway Consent Decree.

09:06 21 The Court well-understands that no hearing is
22 required by statute or regulation, and the parties do not
23 and did not specifically request a hearing.

09:07 24 I wished to hold that hearing with you so I could
25 have the quick interchange of information that I may be

1 lacking. And I asked the parties to be prepared to address
2 motions to enter all three consent decrees so that after
3 decades of litigation and the number of courts that this has
4 passed through, that I'm certain I have as good an
5 understanding as I can, after 30 years of this litigation.

09:07 6 I also had a con- -- grave question what future
7 consent decrees are anticipated by the parties.

09:07 8 The response I got from the magistrate judge was
9 that the parties anticipate two further consent decrees that
10 will likely be entered in this case, although not in the
11 immediate term. And to get to that decision-making, the
12 Court needs to move through this initial process so that you
13 can then determine what's appropriate in terms of a consent
14 decree or any disagreements.

09:08 15 And what is holding this back is the entering of
16 these threshold consent decrees that starts to move
17 remediation forward. It's anticipated concerning soils:

09:08 18 First, that the soils operable unit of the site is
19 in an area where certain of the defendants have been held
20 libel. It's described in Paragraph 11 of the stipulation
21 that the parties are, quote/unquote:

09:08 22 "Working collaboratively at this
23 portion of the site, but it cannot be
24 fully resolved until further remedial
25 decisions have been made."

09:08 1 If the parties agree to settlement in the area, it
2 would be memorialized in a consent decree.

09:08 3 In any event the remedy itself could not be
4 performed until after completion of the work outlined in the
5 DNAPL Consent Degree, but the DNAPL lies under these soils.
6 So, therefore, the roadblock to even discover, in a sense,
7 any potential future problems is us moving forward at some
8 point on these consent decrees before the Court to initiate
9 this phase.

09:09 10 The second is the Southern Pathway remedy.
11 Depending on the outcome of the investigation that
12 defendants will perform pursuant to the
13 Southern Pathway Consent Decree, "EP" may select an
14 appropriate remedy for that portion of the site. It's
15 described in paragraph 10 of the stipulation; that, if EPA
16 determines a remedy is necessary and agreement is then
17 reached among the parties, the agreement would be
18 memorialized in a future consent decree.

09:10 19 The Southern Pathway Consent Decree itself does
20 not require the defendants to perform the cleanup. However,
21 the investigation defendants will perform under the
22 Southern Pathway Consent Decree must be completed before a
23 remedy can be selected.

09:10 24 I think that resolves the answer to the question
25 that the Court had about future consent decrees.

09:10 1 Are there any other future consent decrees that
2 are contemplated beyond what I stated?

09:10 3 Okay. Hearing none.

09:10 4 The fourth question I asked Judge Standish to
5 inquire of you were, if there are future consent decrees
6 anticipated, why should the Court enter these three consent
7 decrees now?

09:10 8 And the response that I've gotten from the parties
9 through the magistrate judge is that the two potential
10 consent decrees described in the response to my question are
11 not expected to be completed before 2023.

09:11 12 However, it's important that the work required by
13 these three lodged consent decrees before the Court
14 constituting approximately \$80 million of cleanup work be
15 initiated now, or you could never ultimately get to the
16 future consent decrees. And while the cleanup of the
17 groundwater and DNAPL is occurring now at a smaller scale
18 through startup testing and pilot testing, retrospectively,
19 entry of the recently lodged O&M and DNAPL Consent Decrees
20 will allow the full remedy, which was begun in the
21 Construction Consent Decree, to continue and is necessary to
22 "remeet" [sic] the groundwater and protect the public.

09:11 23 Entry of the lodged Southern Pathway Consent
24 Decree work is necessary to complete the investigation of
25 the Southern Pathway. EPA cannot select any remedy for the

1 Southern Pathway or negotiate any consent decree to
2 implement it until the investigation required by the
3 Southern Pathway Consent Decree is completed.

09:12 4 And the defendants stand ready to perform the work
5 of these three consent decrees as soon as the Court approves
6 these decrees. And this work is an important benefit to the
7 public, and the parties appear and state are eager to begin
8 this work immediately. So, therefore, once again, any
9 inertia in terms of these consent decrees, once again, takes
10 this litigation on a longer path than the three decades
11 before the Court.

09:12 12 The last question I had was what is the effect of
13 these three consent decrees -- of the order regarding
14 administrative closure on the barrels in the ocean or any
15 other issues. You certainly are all aware of the -- what
16 I'm gonna call the "shallow shelf" and then the deep water,
17 and the unknown amount of hundreds of thousands of barrels
18 in apparently deep water that may not have the technology to
19 remediate or bring those barrels to the surface at the
20 present time. Apparently even Scripps Institute was
21 involved in some kind of effort.

09:13 22 And I was concerned that any consent decree signed
23 by this Court or another court would preclude future
24 litigation if that becomes ripe. In other words, when
25 Judge Real had this case in the 1990s, there was no

1 awareness of these "deep water" barrels.

09:14 2 So the entry of these three consent decrees and of
3 attached stipulation order would have no effect on other
4 portions of the site, according to the input from
5 Judge Standish. Entry of these three consent decrees and of
6 the attached stipulation and order would have no effect on
7 the barrels that are located far offshore nor on the
8 public's ability to pursue cleanup of the contamination in
9 the ocean. And I'm going to want that representation on the
10 future because long after I'm probably here [verbatim], I
11 don't want there be a claim that anything that this Court
12 has done concerning signing these consent decrees has any
13 effect on liability or non-liability on this other unknown
14 hundreds of thousands of barrels in the ocean.

09:15 15 So the effect of the Court's entry of these three
16 consent decrees would be to ensure that the specified
17 cleanup work at the areas of the site are performed and
18 associated costs paid, and to resolve certain claims
19 relating to those portions of the site. The stipulation and
20 order themselves are case management tools and have no
21 effect other than to remove the case from initially the
22 active docket.

09:15 23 And I've been rethinking that. I may keep the
24 case open and not remove it, in an administrative sense.
25 Although it makes no sense; it just removes a number. And I

1 may simply keep the case active and not put it on an "active
2 status" because it gives me a better monitoring, if you
3 will, ability.

09:16 4 The parties have stated, quote:

09:16 5 "This order shall have no legal
6 consequence other than to remove this
7 case from the Court's active docket and
8 to effectuate the final judgments
9 described in Paragraph 3."

09:16 10 The parties entered into a previous consent decree
11 in 2001. That is the Offshore Consent Decree at ECF
12 Number 2645. It's Paragraph 6.A of the stipulation that
13 addresses certain ocean issues. This is a Cashout Consent
14 Decree for which the Court entered final judgment 20 years
15 ago.

09:16 16 Nothing that the parties apparently are asking the
17 Court to do at this time would foreclose any governmental or
18 private parties' future decisions or action regarding the
19 barrels in the ocean issue. That's one of the reasons
20 you're here today. I want that representation, once again,
21 and stipulation on the record.

09:16 22 Concerning the defendants' additional statements
23 to the Court, and that is, that the barrel disposal sites
24 that have been subject to recent news attention were
25 apparently documented in detail in a 1985 report prepared on

1 behalf of the Los Angeles Regional Water Control Board,
2 2000, Trial Exhibit Number 4135, *Allan Shartrand, et al.*,
3 Quote:

09:17 4 "Ocean dumping under Los Angeles
5 Regional Water Quality Control Board
6 permits a review of past practices
7 potential adverse impacts and the
8 recommendation for future action."

09:17 9 It's a March 1985 report.

09:17 10 When plaintiffs filed the operative complaint in
11 the instant lawsuit, plaintiffs alleged that Montrose, at
12 least during the period from 1947 until 1961, arranged for
13 the disposal through ocean dumping of processed waste
14 containing hazardous substances, including DDT from the
15 Montrose DDT plant.

09:18 16 The disposals of the waste material occurred at
17 and en route to ocean dump sites located in and around the
18 San Pedro Channel and the environs of the Santa Catalina
19 Island and the Channel Islands. That's in the Third Amended
20 Complaint at paragraph 17 of December 8th, 1999.

09:18 21 Under the 2001 Offshore Consent Decree, defendants
22 made \$73 million to, quote, "finally and fully resolve all
23 present and future liability," end of quote, for natural
24 resource damages and response costs in the offshore areas,
25 subject to the consent decree's reservations and reopeners.

1 The Offshore Consent Decree, Paragraphs J-7 and 11. The
2 offshore areas include, quote:

09:19 3 "The areas in and around Santa Catalina
4 and the other Channel Islands, the
5 San Pedro Channel, and any ocean dump
6 sites used for disposing of waste from
7 the Montrose plant property and any
8 offshore areas to which hazardous
9 substances, including, without
10 limitation, DDT, aerially or otherwise
11 originating from the Montrose plant
12 property or the Stauffer Dominguez plant
13 property have or may become located."
14 That's paragraph of 5H.

09:19 15 Combined with the settlements that plaintiffs
16 reached with municipalities and parties associated with PCP
17 discharges, plaintiff collected more than \$140 million to
18 address offshore contamination as set forth in ECF numbers
19 1671, 1673, and 1674.

09:20 20 I want you to correct that record, or any of the
21 exhibits that I've stated, in case I misread in this summary
22 over the last three decades trying to understand the
23 litigation in the matter.

09:20 24 So let me turn to the plaintiffs. And you've
25 already corrected me. I said Q&M -- my apology -- if I said

"Q," it's obviously O&M, operation and maintenance.

Any corrections that you'd like to make to exhibit numbers or the initial statement by the Court? And then we're going to go through each of the responses.

MS. GITIN: Thank you, Your Honor.

RESPONSE BY MS. GITIN

MS. GITIN: I had a couple of small corrections.

One was the lodging date for the Southern Pathway Consent Decree. And that consent decree, as stated by the Court, is 3054. The lodging date for that was March 12th, 2021.

I'm also not certain -- I may have misheard or there may've been a misquote -- the amount of response costs to be paid to the United States under the second consent degree --

THE COURT: Is that the DNAPL?

MS. GITIN: Correct.

THE COURT: Okay.

MS. GITIN: -- is \$340,000.

That may or may not have been what Your Honor said.

THE COURT: It should be \$340,000 to the United States and \$61,798.11 to DTSC; is that correct?

MS. GITIN: Yes.

THE COURT: Okay.

MS. GITIN: And then for the third consent decree,

1 the Southern Pathway -- again, I may just not have caught it
2 quickly enough -- but it's \$3,750,000 to the United States.

09:21 3 THE COURT: And \$250,000 to DTSC --

09:21 4 MS. GITIN: Correct.

09:21 5 THE COURT: -- for past costs primarily related to
6 this portion of the site.

09:21 7 MS. GITIN: And -- and there's one other -- maybe
8 more of a nuance.

09:21 9 On the two consent decrees that we anticipate in
10 the future, one is the Soils Consent Decree and the other
11 the potential Cleanup Consent Decree for the
12 Southern Pathway -- um, for the first, one the Soils Consent
13 Decree, we could reach that consent decree even if these
14 three were not entered, but the work couldn't actually be
15 performed unless the second consent decree, the DNAPL -- or
16 D-N-A-P-L, is entered.

09:22 17 THE COURT: So we need both to move forward --

09:22 18 MS. GITIN: Yes.

09:22 19 THE COURT: -- in a practical sense.

09:22 20 MS. GITIN: And I do want to say on the record
21 that there is nothing in the entry of these three consent
22 decrees that can have preclusive effects on the public's
23 rights, the Court's rights, the government's rights, the
24 defendants' rights, for any other area of the site, or for
25 ocean offshore areas.

09:22 1 THE COURT: Okay. Let me turn to Montrose.

09:22 2 Counsel, I know each of you, as well. Would you

3 be kind enough to just state who the speaker is for the

4 record.

09:22 5 MR. RICHARDSON: Yes, Your Honor. Thank you.

6 Kelly Richardson with Latham & Watkins for Montrose

7 Chemical.

09:23 8 **RESPONSE BY MR. RICHARDSON**

09:23 9 MR. RICHARDSON: First, thank you for the

10 summarization. I think you -- you summarized 30 years of

11 litigation, uh, very accurately. I have no, uh,

12 modifications to the statements that you made.

09:23 13 And I would agree with Ms. Gitin that nothing

14 associated with the three consent decrees that are before

15 the Court today affect anything related to the offshore

16 issues that are addressed in -- in the --

09:23 17 *(Court reporter requests clarification for the*

18 *record.)*

09:23 19 MR. RICHARDSON: Yes, yeah.

09:23 20 There's nothing in the three consent decrees today

21 that impact in any way the offshore issues particularly as

22 addressed in the 2001 consent decree.

09:23 23 THE COURT: That was of particular concern to me:

24 That long after you and I are counsel or court, that there

25 would be a future argument that anything that we're doing in

1 terms of this 30 years of litigation on the Montrose sites,
2 the Southern Pathway, et cetera, has a relationship to the
3 deep oil barrels that have been unable, at least, to be
4 raised at this time, apparently numbering in hundreds of
5 thousands. And that has to be left for future litigation or
6 decrees.

09:24 7 As long as I had that representation, I feel much
8 more comfortable. I just didn't want a future court to be
9 looking back without clarity. Okay?

09:24 10 MS. GITIN: And, Your Honor, if I may?

09:24 11 I just wanna make clear the government is not
12 either endorsing or rejecting any of the statements that
13 were made in recent press articles about numbers or
14 locations of barrels.

09:24 15 THE COURT: I -- I understand. Okay.

09:24 16 Okay. Well, let me turn, then, to the other
17 parties.

09:24 18 Counsel, if you'd like to state the party you
19 represent and correct the record for me, in case the Court,
20 reading these through decades of materials, has misstated an
21 Exhibit Number or mischaracterized in any way the -- you
22 know, a general outline of where we stand at the present
23 time.

09:24 24 MR. HSIAO: This is Winston Hsiao for TFCF
25 America, Inc.

09:24 1 I've nothing further to add, Your Honor.

09:24 2 MR. DONALD: Wiley Donald for Stauffer Management

3 Company and Bayer CropScience.

09:25 4 No comments on your able summation.

09:25 5 THE COURT: Okay.

09:25 6 MR. DONALD: Thank you, Your Honor.

09:25 7 THE COURT: Well, I appreciate it.

09:25 8 **FURTHER REMARKS BY THE COURT**

09:25 9 THE COURT: Then can we go through Docket

10 Number 3055. It would be in support of the motion to enter

11 the proposed consent decrees. It would be the O&M and what

12 we refer to as the DNAPL, or D-N-A-P-L, for a moment.

09:25 13 First, the estimated amount of 77 million-point or

14 \$77.6 million at the Montrose site, which contains the

15 property where one of the largest DDT manufacturing plants

16 in the United States operated. These proposed consent

17 decrees also cover over 4 million for EPA and \$200,000 for

18 DTSC toward public agency response costs.

09:26 19 The settling defendants will perform these

20 cleanups until they're completed regardless of cost and

21 duration at settling defendants' own expense, and will also

22 pay the United States and DTSC's costs for overseeing the

23 cleanups.

09:26 24 I'm requested, in this -- in these consent

25 decrees, to find that there [sic] are substantively and

1 procedurally fair and reasonable and consistent with
2 CERCLA's purposes of having the potentially responsive [sic]
3 parties perform and fund cleanup -- preferably through
4 settlement. Plaintiffs conclusion on behalf of -- I'm going
5 to refer to as "the government," generally -- is that these
6 are fair and consistent with CERCLA and includes
7 consideration of the comments received.

09:27 8 And we took the added precaution of sending out an
9 email -- is that correct, Karlen? -- to Del Amo.

09:27 10 THE CLERK: Yes.

09:27 11 THE COURT: Okay. And also I think the Water --
12 but they should be aware of this, obviously.

09:27 13 In December 1999, plaintiffs entered the Third
14 Amended Complaint under Section 107 of CERCLA. And in 2012
15 the plaintiffs and settling defendants Montrose, Bayer,
16 Stauffer, and TFCF entered an additional consent decree,
17 which is known as the Construction Consent Decree, which is
18 ECF Number 2731-2, which is the precursor to the presently
19 proposed O&M Consent Decree.

09:28 20 And in the Construction Consent Decree those
21 settling defendants agreed to construct the primary
22 treatment system for the cleanup of the chlorobenzene plume
23 groundwater contamination at the dual site "OU," the same
24 remedial component for which you are now committing in the
25 proposed O&M Consent Decree to perform long-term operation

1 and maintenance.

09:28 2 And in just a moment, in the responses to some of
3 the issues, I'm going to come back to this.

09:28 4 Apparently, the plant operated from 1947 until
5 1982 at the Normandie Avenue address or location. And
6 Montrose was apparently the biggest manufacturer of
7 DTT [sic] in the United States. It's set forth in your
8 documentation that in 1962 the production at the Montrose
9 plant reached 5.5 to 6 million pounds of "DTT" a month. And
10 after "DTT" was band in the United States in 1972, Montrose
11 continued to produce "DTT" for export until 1982.

09:29 12 *(Court reporter requests clarification for the
13 record.)*

09:29 14 THE COURT: I'm sorry, Deb.

09:29 15 D-D-T. So Delta, Delta, Tom.

09:29 16 The plant subsequently dismantled or removed from
17 the property, and the majority of the property was paved
18 over, which has caused a concern, obviously.

09:29 19 Settling Defendant Montrose was the operator of
20 the Montrose plant at the time of the disposal of the DDT
21 and chlorobenzene.

09:30 22 Suddenly, Defendant Stauffer was the operator of
23 the Montrose plant at the time of disposal of the DDT and
24 chlorobenzene -- my apologies. Settling defendants -- you
25 were the successor company in this matter; correct?

09:30 1 MR. DONALD: Bayer CropScience is a successor to
2 Stauffer Chemical Company.

09:30 3 THE COURT: Okay. Bayer is the successor to the
4 former owner?

09:30 5 MR. DONALD: Yes.

09:30 6 THE COURT: Okay.

09:30 7 -- of the Stauffer property.

09:30 8 And Settling Defendant TFCF is successor to a
9 parent company of Montrose, which the plaintiffs have
10 contended is directly liable as the former operator of the
11 site; is that correct?

09:30 12 MR. HSIAO: Correct.

09:30 13 THE COURT: Okay.

09:30 14 Because there's been a lot of changes in the
15 successor to these original entities.

09:31 16 All four defendants are signatories to both the
17 O&M Consent Decree and the DNAPL "CD."

09:31 18 (To court reporter:) And, Deb, when I say
19 "DNAPL," it's D-N-A-P-L. But it's commonly referred to as
20 "D-NAPL."

09:31 21 One factor complicating the cleanup of the
22 Montrose groundwater has been what EPA has determined to be
23 co-mingling of the Montrose-related groundwater
24 contamination with the groundwater contamination from the
25 adjacent superfund site, which we've oftentimes referred to

1 as "dual" -- and that's the Del Amo superfund site, which is
2 why you're getting comments, of course, from the Del Amo
3 Action Committee, as well as contamination from additional
4 facilities in the immediately surrounding area.

09:32 5 This dual OU groundwater contamination consists of
6 three principal plumes, as the Court understands it.

09:32 7 First of all, the chlorobenzene plume, the benzene
8 plume, and the TCE plume.

09:32 9 (To court reporter:) So, Deb, for you
10 chlorobenzene, C-H-L-O-R-O-B-E-N-Z-E-N-E, and then plume,
11 P-L-U-M-E.

09:32 12 A separate plume, the benzene plume, which we're
13 going to discuss in just a moment.

09:32 14 (To court reporter:) B-E-N-Z-E-N-E.

09:32 15 And the third plume, the TCE --

09:32 16 (To court reporter:) So Tom, Cat, Echo.

09:32 17 -- TCE plume.

09:32 18 The chlorobenzene plume contains groundwater
19 contamination that EPA has determined came from the Montrose
20 site.

09:33 21 The dual site ROD outlines cleanup standards for
22 these three plumes. And eventually we're going to get into
23 a discussion on the response concerning the request of
24 25 mg/L and 3 mg/L, that Del Amo raised in terms of
25 reinjection of water, and their request that it move to a

1 standard of 3 mg/L, which is why I'm setting the basis right
2 now, to see if I can get responses to all of these answers,
3 which I think I have in the documents and I think are
4 satisfactory, but I want to make certain.

09:33 5 The Court's approval of the Construction
6 of the [sic] Consent Decree in 2012 affirms EPA's decision
7 to address these three plumes separately --

09:34 8 So apparently Judge Real entered that order --

09:34 9 MS. GITIN: Correct.

09:34 10 THE COURT: -- in 2012. We're bound by it.

09:34 11 -- and to construct the treatment for the
12 chlorobenzene plume.

09:34 13 So later we're going to hear a concern and a
14 response. What's happening with these other two plumes?
15 And the response from the EPA will be that that's not part
16 of this negotiated settlement.

09:34 17 So laying the groundwork, and now moving to the
18 DNAPL, this addresses contamination that is present at the
19 site primarily in soils and shallow groundwater beneath the
20 former footprint of the former Montrose plant. If not
21 cleaned up, DNAPL is a continuous source of contamination to
22 the groundwater.

09:34 23 The settling defendants have already conducted a
24 successful pilot test of electrical --

09:34 25 *(Court reporter requests clarification for the*

1 record.)

09:35 2 THE COURT: Yeah, that's a mouthful.

09:35 3 Well, the settling defendants conducted a
4 successful test pilot of electrical resistance heating
5 technology. And as of November 2020, it's represented to
6 the Court that the "pilot" had removed 8,623 gallons of
7 DNAPL or over 80,000 pounds of contamination.

09:35 8 There are terms in the two consent decrees, but
9 the key terms of the O&M Consent Decrees are as follows,
10 amongst many:

09:36 11 First, the O&M Consent Decree commits settling
12 defendants to perform operation and maintenance of the
13 chlorobenzene plume remedy at the dual site OU. The present
14 net value of the work is estimated at \$52,600,000. But the
15 settling defendants have committed to perform the work
16 regardless of its cost, which may be in excess of the
17 settling amount, and will continue to implement the remedy
18 under the ROD's performance standards being achieved.

09:36 19 Also, the O&M CD allows recovery of \$4 million and
20 previously unreimbursed EPA past response costs, and
21 \$177,265.36 of previously unreimbursed DTSC past response
22 costs related to the dual site. The settling defendants
23 will also pay the costs of EPA and DTSC oversight of the
24 work.

09:37 25 The key terms of the DNAPL Consent Decree are the

1 DNAPL Consent Decree commits the settling defendants to
2 operate and maintain the electrical resistance, heating and
3 soil vapor extraction remedy selected by EPA of the DNAPL
4 ROD, R-O-D.

09:37 5 The present net value of the work is estimated to
6 be at \$25 million. But the settling defendants, once again,
7 have committed to perform the work regardless of its cost,
8 and will continue to implement the remedy until the ROD's
9 performance standards are achieved.

09:38 10 The DNAPL Consent Decree also recovers \$340,000 in
11 previously unreimbursed EPA past cost responses and
12 \$61,798.11 in unreimbursed DTSC past response costs related
13 to the DNAPL OU. The settling defendants will also pay to
14 the United States and DTSC's costs of overseeing settling
15 defendants' performance of the work. And the only matters
16 addressed by this Consent Decree are the work performed, the
17 specified past response costs, and the future oversights
18 cost. The settling defendants received no covenants not to
19 sue from the plaintiffs, only for those specified matters
20 and subject to various reservations of rights. And, as
21 CERCLA provides, the settling defendants also receive
22 statutory contribution protection from the claims by other
23 parties regarding these matters addressed. Settling
24 defendants do not receive a covenant not to sue or
25 contribution protection by any other OU at the site.

09:39 1 Both consent decrees seem to generally track the
2 standard language from the EPA's published model consent
3 decree: For instance, financial assurance to guarantee
4 performance; stipulated penalties for violation.

09:39 5 Concerning the legal standards -- and as we get
6 into the concerns that've been raised -- the standard for
7 approval of a CERCLA federal settlement is whether it is
8 reasonable, fair, and consistent with the purpose that
9 CERCLA is intended to serve, as the Ninth Circuit has held
10 in the very case *United States v. Montrose Chemical*, at
11 50 F.3d 741, at 743, Ninth Circuit (1995) -- that's how old
12 this litigation is.

09:40 13 Courts defer to agencies' expertise when reviewing
14 a proposed settlement. That deference is strengthened and
15 set forth in *Cannons I*, 720 F.Supp. 135 [sic], and at
16 *Randolph*, 736 F.2d at 529. And that deference is
17 strengthened when a government agency charged with
18 protecting the public interest has pulled the laboring oar
19 in constructing the proposed settlement, as the Justice
20 Department, EPA, and DTSC have done here.

09:40 21 The district Court reviewing the proposed consent
22 decree must refrain from second-guessing the executive
23 branch. The balance of competing interests "reflects" on a
24 proposed settlement must be left in the first instance to
25 the discretion of the Attorney General. A consent decree is

1 essentially a settlement agreement subject to continued
2 judicial policing. It is not a decision on the merits, but
3 is a product of negotiation and compromise. And finally,
4 fairness entails both procedural and substantive fairness in
5 this matter.

09:41 6 So first, are the consent decrees substantively
7 fair? The paramount aspect of fairness is fairness to the
8 public. That is the ultimate goal.

09:41 9 And settling defendants must perform here all
10 relevant work, operation and maintenance of the
11 chlorobenzene plume remedy in the O&M CD, and the
12 performance of the DNAPL remedy in the DNAPL CD. The
13 estimated amount of this work, \$77.6 million. But, once
14 again, the settling defendants are making an open-ended
15 commitment to complete the work regardless of its cost. The
16 settling defendants are also paying past response costs to
17 EPA and DTSC.

09:42 18 The consent decrees also must be procedurally
19 fair. And I'm going to ask you in a few moments about the
20 past Special Master holding that EPA and DTSC were to not be
21 in communication with what I understand to be Del Amo. And
22 we're going to get a record of when that order was lifted.
23 And eventually I'm going to ask you and make certain that
24 there's been transparency and what has occurred in that
25 interim period of time on both EPA's part, or Montrose's

1 part, or anybody's part so that everybody's aware of the
2 proceeding and had a chance to participate.

09:43 3 Litigation spanned three decades with over 3,000
4 docket entries and the person -- and the parties have not
5 been sufficiently adverse. Negotiations between the O&M CD
6 and DNAPL CD were lengthy, and the parties are both
7 represented by experienced counsel and technical staff.

09:43 8 Were any of you involved in the initial filing in
9 this matter in the 1990s?

09:43 10 MR. ALLEN: I was, Your Honor. Jose Allen.

09:43 11 THE COURT: Pleasure. It's nice to have you here.

09:43 12 MR. ALLEN: Thank you, Your Honor.

09:43 13 THE COURT: Especially after three decades.

09:43 14 Beyond the procedural fairness of the consent
15 decrees themselves, the EPA also must respond to public
16 comment in both the dual site and the DNAPL records of
17 decision, and also incorporated community comment at various
18 points in its management of the site.

09:44 19 And the reason I'm asking that is there was a
20 recent complaint or a complaint concerning whether Del Amo
21 had been sufficiently contacted. And I've received a
22 response, but we'll make a record of that.

09:44 23 The next prong is are these consent decrees
24 reasonable. And under the proposed consent decree, settling
25 defendants will perform and pay for the cleanups that EPA

1 has selected for the chlorobenzene plume and for the DNAPL
2 OU. And that's why, in a few moments, we'll discuss in a
3 few moments the issues concerning benzene and the other
4 plume.

09:44 5 And, once again, settling defendants have
6 committed to fully perform and pay these cleanups, if
7 appropriate, given the litigation posture of these sites.

09:44 8 And finally, are these --

09:44 9 *(Court reporter requests clarification for the*
10 *record) --*

09:44 11 THE COURT: These portions -- and finally, are the
12 consent decrees consistent with CERCLA.

09:45 13 CERCLA reflects Congress' conclusion that those
14 who cause pollution, not the taxpayers, should shoulder the
15 cost of cleanup for superfund sites. The statute explicitly
16 favors settlement, especially where PRPs agree to perform
17 the work --

09:45 18 (To court reporter:) Paul, Ralph, Paul -- PRPs.

09:45 19 -- and directs EPA to provide incentives for
20 parties to settle.

09:45 21 It's presented to the Court that both decrees are
22 fully consistent with a threefold purpose of CERCLA:

09:45 23 First, to remedy the effect of hazardous
24 substances to the environment;

09:45 25 Second, to ensure that the costs of those actions

1 are borne, to the extent possible, by those who caused the
2 releases and profited from them, and to --

09:46 3 Third, to encourage settlement of the CERCLA
4 claims.

09:46 5 It's represented to the Court and argued that both
6 decrees are consistent with published EPA CERCLA model
7 provisions; that these decrees preserve the plaintiffs'
8 rights against settling defendants to sue under CERCLA for
9 any matters other than the work and costs specifically
10 addressed in the O&M CD and the DNAPL CD, including the OUs
11 at the site. And the decrees also provide for settling
12 defendants to conduct studies, if requested, in support of
13 EPA's five-year reviews to verify the remedies' continuing
14 protectiveness. And it's my understanding that those have
15 already been underway.

09:46 16 Two comments -- not one -- and thank you, Counsel.
17 Two comments were received on the O&M CD submitted by
18 Del Amo Action Committee and the Water Replenishment
19 District of Southern California. These do not directly
20 address the question of the entry of the O&M CD today. What
21 they apparently do is raise substantive issues concerning
22 the cleanup decisions that EPA made regarding the
23 chlorobenzene plume. So let's take those in order.

09:47 24 The first comment is that one complexity presented
25 in cleaning up the dual site OU groundwater is the need to

1 take into account a chemical known as para, P-A-R-A,
2 chlorobenzene, C-H-L-O-R-O-B-E-N-Z-E-N-E, sulfonic,
3 S-U-L-F-O-N-I-C, acid.

09:48 4 (To court reporter:) We're going to refer to
5 that, then, Deb, as, quote, small "p," capital C-B-S-A.

09:48 6 And this substance occurs only in connection with
7 DDT manufacturing and is present in groundwater at the dual
8 site.

09:48 9 It's represented that this is not a CERCLA
10 hazardous material, that there are no promulgated federal or
11 California health-based standards for pCBSA. And
12 accordingly, EPA did not select a cleanup value for pCBSA as
13 a performance standard for the dual site remedy.

09:49 14 This is -- the 1999 dual site ROD does not require
15 the cleanup of pCBSA in the aquifer. However, the dual site
16 ROD does set pCBSA limits relegated to reinjection of
17 groundwater that's been removed from the aquifer, and pCBSA
18 may only be reinjected into the aquifer at the concentration
19 of 25,000 parts per billion --

09:49 20 (To court reporter:) So, Deb, per billion, you'll
21 oftentimes hear me say ppb, so put that in parentheses.

09:50 22 -- or less. EPA set this limit after considering
23 a state agency request that EPA adopt a non-promulgated
24 criteria of 25,000 ppb for reinjection based on a
25 toxicological study.

09:50 1 Now, let me stop.

09:50 2 There have been lot of variations between the

3 State of California and the federal government. Federal

4 government supervises the entire United States, from

5 Oklahoma to Texas to California. And California's been

6 perceived to be more progressive in some quarters concerning

7 the environment.

09:51 8 Apparently, in 2014, following settling

9 defendants' commencement of the construction groundwater

10 system, the Del Amo Action Committee was concerned about the

11 pCBSA and asked EPA and state agencies to re-examine the

12 pCBSA aspects of the chlorobenzene plume groundwater remedy,

13 and the agencies agreed to do so.

09:51 14 EPA took DCA's concern seriously and even directed

15 Montrose to postpone the functional testing -- that, once

16 again, has set us back -- on the groundwater remedy, and a

17 decision that caused Montrose to raise a dispute with EPA

18 under the Construction Consent Decree.

09:51 19 And as I understand it from your briefing and

20 looking at these documents, over Montrose's objection, EPA

21 conducted a formal analysis under California's

22 anti-degradation policy of the impacts of reinjecting

23 "pBSA." And that is your 2017 analysis. And that's

24 published -- and was published on the EPA's website.

09:52 25 And this concerned the discharge of some waste and

1 whether it was permissible and quality of certain bodies of
2 water by preventing degradation. And in performance of the
3 dual site groundwater cleanup, pCBSA could potentially be
4 introduced into waters of California where it had not
5 previously been present. And EPA concluded an analysis
6 under the policy was warranted. And after reviewing and
7 updating this information and conferring with the
8 Los Angeles Regional Water Quality Control Board, EPA then
9 concluded that the reinjection of the treatment water, with
10 up to 25,000 ppb, and then separate "pCBSA," as specified in
11 the ROD, R-O-D, was consistent with the policy.

09:53 12 And in this analysis, EPA determined that the
13 25,000 ppb limit for reinjection remained protective of
14 health and the environment. And that was describing a 2015,
15 five-year review of protectiveness.

09:53 16 And when it drafted the 2017 analysis, EPA used
17 the working assumption that settling defendants would be
18 able to effectively operate the treatment system for
19 chlorobenzene plume using only the western-most two well
20 fields.

09:53 21 And later on, we're going to come to the fact that
22 the eastern-most well field apparently may be used.

09:54 23 This reinjection stream would, quote/unquote,
09:54 24 "be monitored and 'evaluate' to
25 determine if reliance on the western

1 injection well field is effective and if
2 the system will achieve the remedial
3 action objective set forth in the 1999
4 ROD."

09:54 5 (As Read.)

09:54 6 So following Montrose's reassumption of this
7 functional testing and its submission of the modeling, in
8 2018/2019, it became clear to the parties and -- that the
9 settling defendants might need to use both the eastern and
10 western well fields -- you're stating to me -- to perform
11 the groundwater cleanup and comply with the dual ROD -- or
12 the dual site ROD.

09:54 13 So there's an amended analysis that includes
14 appropriate conditions set forth in a public-available 2019
15 Memorandum to File. And it's called the Flow Rate Memo.

09:54 16 (To court reporter:) So, Deb: Flow rate --
17 F-L-O-W, R-A-T-E -- memo.

09:55 18 And that clarifies the ROD. The limited use of
19 the eastern well field might be necessary to perform the
20 cleanup, and thus in the public interest, and would be
21 consistent with the policy.

09:55 22 So let me stop.

09:55 23 Is that eastern well field being used now?

09:55 24 MS. GITIN: Yes, Your Honor, but subject to the
25 conditions in the Flow Rate Memo.

09:55 1 THE COURT: Okay.

09:55 2 There's a secondary, independently conducted

3 five-year review that's concluded that the groundwater

4 remedy is expected to be protective of human

5 health/environmental (verbatim) upon completion. And

6 there's no exposure to contaminated --

09:55 7 *(Court reporter requests clarification for the*

8 *record.)*

09:55 9 THE COURT: There's no exposure to contaminated

10 groundwater, and there's no evidence of dual site

11 contamination intruding into indoor air.

09:56 12 And the settling defendants have agreed in the

13 proposed O&M Consent Decree to withdraw the two disputes

14 they previously raised on the Construction Consent Decree

15 and, once again, to commit in the O&M Consent Decree to

16 perform the ROD consent with the Flow Rate Memo.

09:56 17 **COURT'S INQUIRY**

09:56 18 THE COURT: So here are the comments and the very

19 few questions I may have:

09:56 20 Both commenters raised concerns about the pCBSA.

21 Del Amo Action Committee states:

09:56 22 "Reinjecting contaminated water from a

23 superfund site (inaudible) --

09:56 24 *(Court reporter requests clarification for the*

25 *record.)*

09:56 1 THE COURT: (Reading:)

09:56 2 "Reinjecting contaminated water from a

09:56 3 superfund site into clean water is

09:56 4 wrong."

09:57 5 DAAC --

09:57 6 (To court reporter:) And I'm going to refer to

09:57 7 them Deb as the Del Amo Action Committee on occasion.

09:57 8 -- also believes EPA should order Montrose to pay

09:57 9 costs associated with developing a standard for pCBSA in

09:57 10 drinking water.

09:57 11 "WRD" expresses concern about reinjecting pCBSA at

09:57 12 the 25 mg/L or 25,000 ppb standard requested by a state

09:57 13 agency in the dual ROD site --

09:57 14 So it appears to me we actually have a conflict

09:57 15 going on between two state agencies. And you can correct me

09:57 16 in just a moment.

09:57 17 -- when the State Environ -- Office of

09:57 18 Environmental Health Assessment proposed in 2015 a 3 mg/L --

09:57 19 or mg, slash, L -- 3,000 ppb concentration in drinking

09:57 20 water.

09:58 21 The response by EPA and DTSC agree that it is

09:58 22 important to follow the policy, which EP [sic] selected as

09:58 23 the applicable or relevant requirement and that the agencies

09:58 24 extensively evaluated the proposed remedy under the policy,

09:58 25 and EPA published its analysis in 2017, and then revised it

1 in 2019 to reflect new information about the performance of
2 the remedy. And this process included several meetings with
3 DCAA [sic].

09:58 4 I'm gonna know when those meetings occurred,
5 basically where they were at, and the depth of those
6 meetings in just a moment.

09:58 7 The analysis reflects EPA's judgment, after
8 consultation with state agencies and the public, that when
9 the remedy requires extraction and treatment of pCBSA
10 containing groundwater from the aquifer, limited reinjection
11 at concentrations below 25,000 ppb into wells, where the
12 treated groundwater can be recaptured to the greatest extent
13 possible, is appropriate and protective of the human
14 environment; and that the 3 mg/L concentration mentioned by
15 the WRD is not a promulgated standard; that, in fact, there
16 is no federal or California promulgated standard for pCBSA,
17 which is not a CERCLA hazardous substance; and that further,
18 this non-promulgated concentration, represented as a
19 concern, is actually a drinking water standard, not an
20 injection standard; and pursuant to the ROD, that the
21 25,000 ppb is the maximum concentration at which pCBSA may
22 be reinjected and the modeling projects that reinjected
23 water treated at this level will not reach drinking water
24 wells for the duration of the remedy, and thus, this model
25 shows, will not introduce any "CBSA" into drinking water

1 wells, let alone pCBSA above 3,000 ppb.

10:00 2 In addition, it's represented to this Court that
3 EPA sampled seven nearby wells to additionally test this
4 pCBSA, and all results up to this time were non-detect.

10:00 5 So let me stop. That's the first comment by
6 Del Amo.

10:00 7 Comments by EPA?

10:01 8 MS. GITIN: Certainly, Your Honor. Thank you.

10:01 9 First of all, I wanted to make sure that one --
10 one answer I gave you does not require correction, which is
11 about the eastern well field.

10:01 12 (To opposing counsel:) Kelly, is it accurate that
13 it's being used now, or it's just projected that it will be?

10:01 14 MR. RICHARDSON: It's being used only in
15 connection with testing currently.

10:01 16 THE COURT: Okay.

10:01 17 MS. GITIN: Thank you.

10:01 18 THE COURT: Okay. So, once again, we have the
19 concern of the reinjection standard -- of which, apparently,
20 there is no standard -- different agencies with diff --
21 promulgations.

10:01 22 So your comments by EPA.

10:01 23 MS. GITIN: Certainly.

10:01 24 **COMMENTS BY MS. GITIN**

10:01 25 MS. GITIN: Your Honor, the first thing I would

1 like to make clear is that there is no conflict between the
2 federal government and the State, or between or among state
3 agencies here.

10:01 4 And I think it's easy to, at first glance, imagine
5 that there might be because you see two numbers that are
6 different: 25,000 parts per billion and 3,000 parts per
7 billion. But they're not apples to apples at all.

10:02 8 The 3,000 parts per billion -- which, again, is
9 not a promulgated standard; it's more of a, "Hey, you might
10 wanna be aware of this if you're a drinking water provider."
11 That is for concentration in drinking water. So if a
12 drinking water purveyor has a drinking water well and is
13 serving that water to the public, that's where that 3,000
14 parts per billion is relevant.

10:02 15 The 25,000 parts per billion that is discussed in
16 our papers is for something completely different. It is --
17 um, if Montrose is in the course of treating water and
18 performing this groundwater remedy for the chlorobenzene
19 plume, if they are moving around water that has pCBSA in it,
20 they may only reinject it into the aquifer at 25,000 parts
21 per billion or less.

10:03 22 Couple things I would say about that. First of
23 all, the aquifer they're reinjecting it into is not the same
24 aquifer as the aquifer that drinking water is being drawn
25 from.

10:03 1 The aquifer they're reinjecting it into -- let me
2 make sure I get this right -- is the Gage aquifer at 175 to
3 240 feet below ground surface.

10:03 4 (To court reporter:) And Gage is G-A-G-E.

10:03 5 So that's where the treated water is reinjected.
6 That is the second shallowest of four aquifers.

10:03 7 The deepest one -- so the fourth aquifer, if
8 you're going downward, is called the Silverado. The
9 Silverado is at 530 to 750 feet down. And that's where
10 drinking water is drawn from.

10:03 11 The third and forth aquifers are separated by over
12 200 feet of clay, vertically.

10:04 13 In addition, drinking water wells are a couple
14 miles from where -- "laterally" from where treated water is
15 being reinjected. So Montrose is able to reinject water
16 into the Gage aquifer at 25,000 parts per billion.

10:04 17 And that -- and so what does that translate into,
18 in terms of the drinking water wells that are a couple miles
19 down gradient and that are also pulling from an aquifer
20 several hundred feet lower down.

10:04 21 Right now we're monitoring this very carefully,
22 and Montrose is required to continue monitoring it as part
23 of its performance of the O&M Consent Decree.

10:04 24 And so what are we seeing. There are no hits of
25 pCBSA in drinking water at all; they are non-detect.

10:05 1 So, first of all, it's not apples to apples. The
2 25,000 is what they can reinject in one spot, and the
3 3,000 -- which, again, is not a promulgated standard -- is
4 what the drinking water purveyors might want to take note of
5 if they are serving drinking water.

10:05 6 However, we are -- as EPA and DTSC, we're very
7 concerned about making sure that nothing that happens in
8 this remedy is affecting the drinking water. So what sorts
9 of protections do we have built in here?

10:05 10 First of all, the Flow Rate Memo that we mentioned
11 is a limit on how much this groundwater remedy can move
12 water that contains pCBSA around. So it tries to minimize
13 that consistent with the performance of the remedy.

10:05 14 So why do they have to move it around at all?
15 Because that's what needs to happen for the cleanup to be
16 effective.

10:05 17 Second of all, currently -- um, because we have
18 the Construction CD and the Consent Decree -- sorry --
19 Construction Consent Decree and the functional testing, um,
20 we already have that system operating, though not at full
21 scale. And right now it's reducing pCBSA to well-below
22 the -- those limits.

10:06 23 My understanding -- and Mr. Richardson can correct
24 me if I'm not correct -- is that the current --

10:06 25 *(Court reporter requests clarification for the*

1 record.)

10:06 2 THE COURT: A little slower.

10:06 3 MS. GITIN: Sorry.

10:06 4 -- from the groundwater treatment system is at
5 about 8- or 9,000 parts per billion pCBSA.

10:06 6 THE COURT: Would you restate that. In other
7 words, is this the injection rate 8- to 9,000?

10:06 8 MS. GITIN: Maybe I'll let Mr. Richardson --

10:06 9 THE COURT: No, no. Let me be sure.

10:06 10 Did I hear that our injection is at 8- to 9,000,
11 not even close to 25,000?

10:06 12 MR. RICHARDSON: That's correct, Your Honor.

10:06 13 THE COURT: So we're well below; in other words --

10:06 14 MS. GITIN: Yes.

10:06 15 THE COURT: Now, we're --

10:06 16 MS. GITIN: It could go up and down. We expect it
17 will go up and down as they're moving water.

10:07 18 THE COURT: Let me be absolutely certain, though.

10:07 19 We have conflict between what I'm going to call
20 "pure drinking water" and a concern about reinjection; that
21 you're representing to the Court it's just not going to
22 occur because of the monitoring process; but regardless --
23 the depth, the clay, et cetera -- but regardless of the
24 25,000 standard, you're not approaching that.

10:07 25 Understood. I understand fluctuation. But

1 basically you're representing to the Court that you're about
2 7-, 8-, 9,000, which is phenomenally under the 25,000, but
3 it's, of course, not at the 3,000 pure drinking water level
4 for reinjection.

10:07 5 That's a surprise to the Court and a very
6 positive --

10:07 7 MS. GITIN: Yeah.

10:07 8 THE COURT: -- very positive development that I
9 didn't expect. I thought I would hear today around 25,000.
10 Okay. Thank you.

10:07 11 MS. GITIN: And, again --

10:07 12 THE COURT: That's a fact, Counsel, that makes
13 your flight and appearance well worth it.

10:08 14 MS. GITIN: Thank you. Thank you.

10:08 15 EPA's technical staff does anticipate that that
16 may go up and down at various --

10:08 17 THE COURT: I understand that. And I
18 understand -- let me repeat for the record -- that it's not
19 consistent and it can vary. But I didn't expect that. I
20 didn't expect that good news.

10:08 21 I expected that we were close to 25,000 and just,
22 you know, inching along. That is incredibly good news.

10:08 23 All right. Please continue.

10:08 24 MS. GITIN: And, third, as we discussed before,
25 this water is not getting to drinking water wells at all.

10:08 1 THE COURT: Is that why you have the seven
2 monitoring wells? Is that part of this process?
10:08 3 MS. GITIN: (To opposing counsel:) Kelly, do you
4 wanna address?
10:08 5 MR. RICHARDSON: Yes, that's correct, Your Honor.
6 The monitoring of those wells will continue --
10:08 7 THE COURT: Okay.
10:08 8 MR. RICHARDSON: -- to ensure -- I would call them
9 sentinel wells to --
10:08 10 THE COURT: Okay.
10:08 11 MR. RICHARDSON: -- check before there's a
12 problem.
10:08 13 THE COURT: So I've got that guarantee also.
10:08 14 MR. RICHARDSON: That's in the Statement of Work.
15 Yes, Your Honor.
10:08 16 THE COURT: I've got the same issue at Saipan
17 right now. We've got 62 wells over there. We're going
18 through much of the same process with filters, et cetera,
19 and holding back seawater at the same time so...
10:09 20 Okay.
10:09 21 MS. GITIN: I think -- I think that's an excellent
22 point.
10:09 23 If for some reason there were -- so our modeling
24 and Montrose's modeling 50 years out says that we do not
25 anticipate that there will be any impact to drinking water

1 wells. And Montrose is required to, in the Statement of
2 Work, to update that modeling every five years to take into
3 account new data.

10:09 4 But in a much more granular level, the monitoring
5 wells are giving us data too of whether we start to see a
6 problem. It's not like whack-a-mole where it's suddenly
7 gonna pop up in a drinking water well. If there's any risk
8 to drinking water wells, we will see it coming literally
9 miles away, and have time to be able to react and respond.

10:09 10 And we meet -- uh, EPA meets with regularly with
11 the L.A. Water Replenishment District, WRD, and other water
12 purveyors. And...

10:10 13 THE COURT: All right. Let me turn to Montrose,
14 then, for just a moment.

10:10 15 MS. GITIN: Certainly.

10:10 16 THE COURT: Do you have any further comments on
17 behalf of Montrose?

10:10 18 MR. RICHARDSON: Your Honor, I think, it's
19 important to look at the toxicity of pcBSA. As the Court
20 noted, it is not a hazardous substance under CERCLA. And
21 there's a reason. And the reason is it's nontoxic.

10:10 22 So, for example, it's less toxic than the caffeine
23 I drank this morning on the way in. It's less toxic than
24 vitamin D. It's just not a toxic substances [sic] and
25 that's why it's not regulated under -- under CERCLA.

10:10 1 One, it's nontoxic.

10:10 2 Two, EPA did a --

10:10 3 *(Court reporter requests clarification for the*

4 *record.)*

10:10 5 MR. RICHARDSON: EPA did a toxicity study for

6 pCBSA for -- different site, not -- not our site -- in 1985.

7 That study concluded that the pCBSA was nontoxic. That led

8 to the 1999 Record'a Decision that concluded that 35,000

9 parts per billion was actually a safe reinjection standard.

10:11 10 In response to the State request, EPA then set the

11 reinjection standard at that time at 25,000. So there was

12 already a margin'a safety built in --

10:11 13 THE COURT: Already a margin of...?

10:11 14 MR. RICHARDSON: Margin of safety.

10:11 15 THE COURT: Okay.

10:11 16 MR. RICHARDSON: Because 35,000 was deemed safe --

17 at least 35,000 -- they set it at 25,000.

10:11 18 Fast-forward to 2014 when the Del Amo Action

19 Committee raised its concerns about pCBSA, the very same

20 concerns --

10:11 21 THE COURT: Slower. Slower.

10:11 22 MR. RICHARDSON: -- the very same concerns that we

23 saw in the comments they submitted in this groundwater CD

24 that's before the Court now.

10:12 25 EPA, then, in 2015, conducted 276 toxicity tests,

1 referred to as TOX-21. It's just a specialized name for the
2 type of test. 276 toxicity tests. Not a single one of
3 those tests showed any activity -- a term of art for the
4 scientists -- showed no activity for any toxicity, no
5 carcinogenicity, no terat -- teratogenicity.

10:12 6 I can spell that. I think I can spell that.

10:12 7 THE COURT: At the recess.

10:12 8 MR. RICHARDSON: Okay. At recess.

10:12 9 So an enormous number of studies done in 2015
10 after Del Amo Action Committee raised these concerns in
11 2014.

10:12 12 So, in short, it's just not a toxic substance.

10:12 13 THE COURT: Okay.

10:13 14 Then let me turn to any of the parties, if you
15 wish to comment, and the name and the entity you represent.

10:13 16 **COURT'S INQUIRY RE TBA**

10:13 17 THE COURT: All right. Then I'd like to take the
18 second comment.

10:13 19 The Del Amo Action Committee mentioned an
20 additional chemical, TBA, stating that it will not be
21 adequately treated before reinjection, according to the ROD.
22 And the response was that this comment does not relate to
23 the reasonableness of the O&M Consent Decree; that there's
24 no federal or state drinking water standard, once again, for
25 TBA; and that the 1999 Dual Site ROD did not provide a TBA

1 treatment standard.

10:13 2 And even so, the Court -- or the past Court deemed
3 the Construction CD fair, reasonable, and consistent with
4 CERCLA. And the Construction of the Consent Decree -- and
5 the Construction Consent Degree is not before the Court on
6 this motion. And it's represented that the settling
7 defendants, at EPA's request, are monitoring the
8 concentration of TBA in the aquifer and "in-effluent" from
9 the chlorobenzene plume treatment plant and all effluent
10 concentrations have been "non-detect" to date.

10:14 11 Is that still a correct statement.

10:14 12 MS. GITIN: That's my understanding, Your Honor.

10:14 13 THE COURT: Is that a correct statement?

10:14 14 MR. RICHARDSON: My understanding as well,
15 Your Honor.

10:14 16 THE COURT: Okay.

10:14 17 MS. GITIN: And you have in the declaration --

10:14 18 THE COURT: I do. But I'm gonna verify that now
19 on the record.

10:14 20 Before I'm concerning signing off on anything, I
21 want you here, and I wanna have this transparent discussion,
22 and I wanna have answers as of today, not from a declaration
23 from somebody -- I think it's "Westmore" or whoever.

10:14 24 MS. GITIN: I will say I am not aware of any
25 information to the contrary.

10:15 1 THE COURT: Okay.

10:15 2 **COURT'S INQUIRY RE TI WAIVER ZONE**

10:15 3 THE COURT: The third comment concerns the "TI
4 Waiver Zone." We're going to call this the "Containment
5 Zone."

10:15 6 There the Del Amo committee objected to the use of
7 the TI Waiver Zone, calling it a "sacrifice zone," where
8 there was no attempt to remove cancer-causing chemicals and
9 it asked the zone be reevaluated based on current
10 technology, and it expressed a concern about the potential
11 exposure in people's homes who live above the
12 TI Waiver Zone, and in drinking water.

10:15 13 So we're back to the same issue concerning
14 drinking water about homes above the containment zone.

10:15 15 And the response is that this comment has no
16 bearing on the reasonableness of the O&M Consent Decree.

10:15 17 The TI Waiver Zone, or containment zone, has been
18 part of the dual site ROD since 1999 and was incorporated
19 into the 2012 Construction Consent Decree deemed by the
20 Court to be fair.

10:16 21 So the prior judge had deemed that to be fair.
22 That's already a ruling by the Court.

10:16 23 And every five years, pursuant to 121(c) of
24 CERCLA, EPA analyzes whether the ROD's standard remains
25 protective of human health. And you've represented to me,

1 literally, on page 23, at lines 12, the following:

10:16 2 "The latest five-year review completed
3 in 2020 concludes that the remedy
4 remains protective."

10:16 5 And you've given me Westmore's declaration.

10:16 6 As of today's date, would you make the same
7 statement?

10:16 8 MS. GITIN: Yes, Your Honor.

10:16 9 THE COURT: Okay.

10:16 10 Also the containment water that will be contained
11 within the waiver zone does not impact residents who live
12 above it. So the groundwater in the TI waiver zone is not a
13 source.

10:16 14 (To court reporter:) And T-I, by the way, Tom,
15 India. TI Waiver Zone. And, Deb, I'll also refer to it as
16 a containment zone. Okay?

10:17 17 The groundwater in the TI Waiver Zone is not a
18 source of drinking water. So thus, neither the drinking
19 water nor the "indoor air residents" living above the TI
20 Waiver Zone would be affected if there was any of
21 groundwater contamination.

10:17 22 I don't think I require any further comment,
23 unless you'd like to make it, because I think the Court's
24 satisfied with that response.

10:17 25 Would anybody like to make a comment concerning

1 that?

10:17 2 MS. GITIN: No. Thank you.

10:17 3 THE COURT: All right.

10:17 4 **DEL AMO ACTION COMMITTEE**

10:17 5 **QUESTIONS RE TCE AND BENZENE PLUMES**

10:17 6 THE COURT: Then comments regarding the TCE --

10:17 7 (To court reporter:) So Tom, Charles Echo.

10:17 8 -- TCE and benzene plumes.

10:17 9 Del Amo has -- Action Committee asks that the
10 identification of additional responsible parties needs to be
11 completed and states that these parties need to be held
12 accountable for the pollution that've [sic] caused.

10:18 13 The response has been that this has not addressed
14 the fairness or reasonableness of the O&M Consent Degree
15 before the Court because the O&M Consent Decree reflects the
16 decision made before entry of the Construction CD to enter
17 into separate agreements with the parties responsible for
18 chlorobenzene, TCE, and the benzene plumes.

10:18 19 And my understanding is the former Court separated
20 those plumes out. Is that correct?

10:18 21 MS. GITIN: Correct, Your Honor.

10:18 22 THE COURT: Okay.

10:18 23 So WRD is incorrect, you've stated, in stating
24 that the main constituents of issue and the O&M Consent
25 Decree are benzene and TCE.

10:18 1 That's not a correct statement. And from the
2 record, it seems to be validated that that is not a correct
3 statement. Rather the O&M --

10:18 4 *(Court reporter requests clarification for the*
5 *record.)*

10:18 6 THE COURT: The O&M Consent Decree, like the
7 Construction Consent Decree, is specifically limited to the
8 chlorobenzene plume, including the commingled contamination.

10:19 9 And I'm taking that from the other superfund site
10 as well, dual. Is that correct?

10:19 11 MR. RICHARDSON: Correct.

10:19 12 THE COURT: Correct? Yes or no.

10:19 13 MR. RICHARDSON: That is correct.

10:19 14 THE COURT: Okay. And does not address the TCE
15 and the benzene plumes or affects plaintiffs' rights to
16 pursue responsible parties concerning those plumes.

10:19 17 So by my signing this, we move forward, as I
18 understand it, and finally start a breaking of the inertia,
19 finally start remediation; and EPA is still free to sue
20 responsible parties for the DNAPL and the TCE plume; is that
21 correct?

10:19 22 MS. GITIN: That's correct, Your Honor.

10:19 23 THE COURT: Then I cannot understand why I would
24 not be proceeding forward, based upon this response by
25 Del Amo.

10:20 1 Now, all parties agree and plaintiff, the
2 government, agrees that the PRB's for the TCE plume and
3 benzene plume should be held responsible. However, those
4 entities are not defendants in the civil action.

10:20 5 Probably not my concern.

10:20 6 Do we know who those entities are?

10:20 7 MS. GITIN: Yes, we do, Your Honor.

10:20 8 THE COURT: Are they being pursued?

10:20 9 MS. GITIN: Yes. We're in particular
10 conversation --

10:20 11 THE COURT: -- not part of our action with
12 Montrose and the other defendants before us?

10:20 13 MS. GITIN: That's correct, Your Honor.

10:20 14 THE COURT: So if Del Amo was here, we would be
15 able to respond they are being pursued; they're just not
16 part of this consent decree.

10:20 17 And if we hold up, waiting for that, we're never
18 going to get remedial action in this matter.

10:20 19 All right. I'm going to pass on to Number 3.

10:20 20 This is baffling to me.

10:20 21 Many of the issues involved in the five-year
22 reviews are concerning community involvement. And EPA
23 recognizes the importance of community involvement. You've
24 got a public record; you followed the process and procedure.
25 And, of course, you value the input of Del Amo and other

1 public members.

10:21 2 But you've stated DAAC has been involved as a
3 stakeholder in the site since 1993. You've stated EPA hosts
4 periodic public meetings to inform the public of
5 site-related news.

10:21 6 But, later on, I note that the Special Master with
7 the prior Court was prohibited "in" having communication
8 between EPA, DTS, and Del Amo. And so I need your help.

10:22 9 What happened? Was that John Carroll as the
10 Special Master?

10:22 11 MS. GITIN: That's correct, Your Honor.

10:22 12 THE COURT: All right.

10:22 13 Was a reason given to you for that
14 noncommunication? In other words, was it vitriolic? Did
15 you have any input about why that communication was deterred
16 by the Special Master?

10:22 17 MS. GITIN: So, Your Honor, obviously -- the
18 generally, the parities wouldn't be reporting on
19 confidential settlement communications to the --

10:22 20 THE COURT: I see.

10:22 21 MS. GITIN: -- the public.

10:22 22 However, the government's position was that the
23 Special Master's order was well-overbroad and did inhibit
24 the public's right to talk to public officials, and so we
25 opposed that order and --

10:22 1 THE COURT: You overruled it.

10:22 2 MS. GITIN: -- the Special Master did in fact --

3 uh, my understanding is he may've stayed, rather than

4 formally lifted that order.

10:22 5 THE COURT: All right.

10:22 6 Now, how long was that order in effect? In other

7 words, if that order was in effect until -- 2016 to 2021,

8 earlier, I'm concerned at least that Del Amo has --

9 certainly they know -- are aware of these proceedings.

10:23 10 When was that order lifted?

10:23 11 MR. RICHARDSON: Your Honor, I think that order

12 was only active for one to two months in 2018.

10:23 13 THE COURT: My impression was it was actually

14 2017. I don't know. Why don't you check your records.

15 You're the litigants in this matter.

10:23 16 MS. GITIN: I have from Ms. Hey -- and we can

17 really run this to ground, if you like. We could take a

18 brief recess to do that. But it looks to us that the order

19 was issued on December 12, 2018, and then was stayed about

20 two months later, February 27, 2019.

10:23 21 THE COURT: All right. That sets my concerns

22 aside.

10:23 23 I wanted a clear record that whatever this order

24 was, in terms of noncommunication, was relatively brief, for

25 a couple-month period of time, and we don't have a lack of

1 transparency or a lack of input. And the representation is,
2 and I think it bears out -- our belief was it was for a
3 very, very short period of time. And it must've been
4 because of settlement negotiations or information that might
5 flow, out that was confidential, to all the parties. But
6 I'm speculating.

10:24 7 **COURT'S TENTATIVE FINDINGS**

10:24 8 THE COURT: Well, then I'm initially or
9 tentatively prepared to find that the consent decrees that
10 secure nearly \$80 million worth of groundwater and DNAPL
11 cleanup work will effectively remediate hazardous
12 substances, protect the health of the community and the
13 environment, and put the responsibility for cleanup with the
14 parties responsible for contamination; and that these
15 decrees do reflect significant coordination and technical
16 evaluation amongst the agencies as well as careful
17 consideration of the public interests and of public
18 comments.

10:24 19 And then, for those reasons, after we discuss
20 other pathways, unless there's further comment, I'm
21 tentatively going to approve these orders today for OM --
22 O&M and DNAPL.

10:25 23 I'm going to turn this back to EPA for any further
24 comments, if you wish, before I move on to the Southern
25 Pathways after a brief recess.

10:25 1 **COMMENTS BY MS. GITIN**

10:25 2 MS. GITIN: I think that's everything.

10:25 3 I have one small nuance that -- just something

4 that was said earlier on, which was that the paving over of

5 the Montrose plant raised concern, was actually the

6 opposite. That's more in the nature of some temporary

7 protection for the public.

10:25 8 THE COURT: Oh, I see.

10:25 9 MS. GITIN: And other than that, I just wanted to

10 thank Your Honor, and also thank Judge Standish for what it

11 took to get us to this point and those two consent decrees.

12 We thank you for the opportunity to finalize the settlement

13 negotiations that we were engaged so intensely in around the

14 holidays.

10:25 15 THE COURT: I want to thank all of you for

16 disturbing your holidays between Christmas and New Year's.

17 I know that that was a burden on you. But I needed to set

18 this in motion and I could only do that between Christmas

19 and New Year's. So thank you for the phone calls and the

20 intrusion into your lives.

10:26 21 Counsel, on behalf of Montrose, any further

22 comments?

10:26 23 **COMMENTS BY MR. RICHARDSON**

10:26 24 MR. RICHARDSON: Your Honor, we -- we agree with

25 plaintiffs. And thank you for the support in this. This

1 marks -- these two consent decrees mark the culmination of
2 decades of technical studies. And these -- they're clearly
3 in the public interest, and we appreciate your efforts on
4 this.

10:26 5 THE COURT: Counsel, would you identify the party
6 you represent and if you have any further comment.

10:26 7 MR. HSIAO: No further comment.

10:26 8 THE COURT: And you represent?

10:26 9 MR. HSIAO: TFCF America.

10:26 10 THE COURT: And the only counsel with us who
11 was -- you deserve, once again, to have your name on the
12 record.

10:26 13 MR. ALLEN: Yes, Your Honor. Jose Allen again.
14 This is a very important milestone in this matter. And we
15 are very pleased and thrilled that we've been able to
16 achieve it today thanks to your effort in encouraging this
17 matter to move forward.

10:26 18 THE COURT: Thank you.

10:26 19 MR. DONALD: Stauffer Management Company and Bayer
20 CropScience. Concur with Mr. Allen.

10:27 21 THE COURT: All right.

10:27 22 You have my representation that, tentatively,
23 unless I hear something during the Pathways discussion, that
24 I'll be signing that at the conclusion of the Pathways
25 discussion.

10:27 1 Why don't you take a recess. I've got other
2 counsel to speak to informally who've been waiting on
3 another matter.

10:27 4 But I wanna take the time with all of you folks,
5 coming in from all over the country after 30 years, so let
6 me humbly apologize to the next matter sitting.

10:27 7 We'll come back in about 30 minutes.

10:27 8 MS. GITIN: Should we clear the tables in the
9 meantime?

10:27 10 THE COURT: No. I'm just going to talk to them
11 informally for a moment, just apologize to them. The
12 litigation is rampant here.

10:27 13 Okay. All right. We'll see you at 11:00 o'clock.

10:27 14 MR. RICHARDSON: Thank you, Your Honor.

10:27 15 *(Proceedings recessed at 10:27 a.m.)*

10:59 16 *(Proceedings resumed at 10:59 a.m.)*

10:59 17 THE COURT: All right. Then -- all right. We're
18 back on the record and all parties are present.

10:59 19 **COURT'S REMARKS/QUESTIONS RE SOUTHERN PATHWAY**

10:59 20 THE COURT: Counsel, with your consent, I'd like
21 to discuss the third and last consent decree, the
22 Southern Pathway Consent Decree. And this, of course, is
23 the actual performance and remedial investigation and
24 feasibility study of the Southern Pathway portion of the
25 site. We've, from the beginning of our relationship,

1 referred to this as the "Southern Pathway" portion or
2 "Historic Stormwater Pathway South."

11:00 3 And this is an area that -- of the site for which
4 liability and costs have been disputed. And there was an
5 issue in the now-vacated trial that saw the parties in some
6 initial disagreement.

11:01 7 Once again, this consent decree commits to perform
8 the Southern Pathway Remedial Investigation and Feasibility
9 Study, which is a full investigation of DDT and other
10 contamination in the Southern Pathway OU and a full
11 feasibility study of alternatives for remediating such
12 containment as described by CERCLA. And, once again,
13 without the signing of this consent decree, we can't go
14 forward with any remediation.

11:01 15 Settling defendants liability for costs and work
16 in the area of the site has been contested in the
17 litigation. But now there's a commitment to perform and pay
18 for the Pathway Remedial Investigation and Feasibility
19 Study, regardless of its extent, duration and expense,
20 subject to only some certain specified limitations.

11:02 21 It's been represented to this Court that the entry
22 of this consent decree would partially resolve plaintiffs'
23 claims in the civil action against settling defendants,
24 which include all remaining defendants to this litigation.

11:02 25 As part of the commitment, settling defendants

1 will also incorporate data from preexisting sampling
2 performed by EPA and others in the Southern Pathway, and
3 will pay \$3.75 million to EPA and \$250,000 to DTSC for
4 previously incurred response costs primarily related to the
5 Southern Pathway OU. This appears to be highly beneficial
6 to the public, given the circumstances of the litigation.

11:03 7 The consent decree has been represented to serve
8 judicial economy, stewardship of public resources, ending
9 active litigation in the case that spans over three decades
10 and 3,000 docket events.

11:03 11 And the plaintiffs believe that, with judicial
12 approval of the CERCLA consent decrees, that the consent
13 decree substantially and procedurally is fair, reasonable,
14 and consistent with CERCLA's purpose of having the
15 potentially responsible parties perform and fund cleanup
16 work, preferably through settlement.

11:03 17 The information that the Court has is that the
18 Southern Pathway OU is that area containing containment
19 soils at the site that begins south of Torrance Boulevard
20 and less than half a mile southeast of the Montrose plant
21 property. And that will become important in a moment in
22 some of the comments that the Court's received.

11:04 23 Seven adjacent residences, the "residential
24 properties," the former Royal Boulevard landfill, a
25 downgraded area, the site investigation area beginning

1 outside that landfill and extending to the intersection of
2 Torrance Boulevard and South Vermont Avenue and the segment
3 between South Vermont Avenue and the Dominguez Channel.

11:05 4 The Southern Pathway OU drains surface water from
5 the Montrose plant property and surrounding areas south of
6 Torrance Boulevard to the Dominguez Channel through natural
7 sloughs, ponds, drainages beginning in the 1940s. And over
8 time this historic stormwater pathway was replaced by modern
9 stormwater infrastructure, including culverts and concrete
10 channels. This infrastructure work was completed in the
11 early 1970s.

11:05 12 And the parties agree that hazardous substances,
13 including DTT -- DDT have been found at the ECI property and
14 the adjacent residential properties within the Southern
15 Pathway OU, though there's some disagreement as to whether
16 the Montrose plant property is the source of that
17 contamination.

11:06 18 EPA has already performed or overseen
19 investigation work with the support from DTSC, including
20 extensive soil sampling at the ECI property and adjacent
21 residential properties.

11:06 22 The plaintiffs' claims at trial for \$3,562,950.24
23 in the United States' response costs, and \$234,133.30 --
24 38 cents -- in DTS response costs, include unreimbursed
25 response costs that plaintiffs have incurred in performing

1 this work and related actions in the Southern Pathway.
2 However, extensive investigation work has not yet occurred
3 further down gradient in the Southern Pathway OU.

11:06 4 And accordingly, what I call the next step in the
5 CERCLA process, is the completion of this "remedial
6 investigation feasibility" study for the Southern Pathway
7 OU, which is before the Court, and which will incorporate
8 data from previous investigations around the ECI property
9 and adjacent residential properties, as well as the previous
10 human health risk assessments and ecological risk
11 assessments, and will perform the necessary investigation
12 and sampling further downstream in the Southern Pathway OU.

11:07 13 And remedial investigation study is a required
14 step in EPA's CERCLA process for selecting a cleanup remedy
15 for a portion of a superfund site. Either EPA or
16 potentially responsible parties can perform A-R-F [sic] or
17 RIFS. But, as with all CERCLA work, there's a preference
18 for responsible parties to perform and fund this work under
19 EPA's supervision. And the purpose of the RIFS is to assess
20 site conditions and evaluate alternatives to the extent
21 necessary to select the remedy.

21:08 22 In the case of the Southern Pathway OU the parties
23 intend to pursue a cooperative resolution of the cleanup
24 once the RIFS has been completed and EPA selects any remedy
25 necessary and documents in its Record of Decision, which

1 then could lead to further consent decrees, as the Court
2 understands.

11:08 3 So I want to turn to the terms of the proposed
4 consent decree and go through each one of those to make
5 certain that we have that discussion, instead of trading
6 emails or working through, indirectly, other sources that
7 are time-consuming.

11:08 8 Settling defendants, as I understand it, will
9 perform the RIFS in order to determine the nature and extent
10 of DDT and other contaminaries -- contamination in the
11 unstudied portions of the Southern Pathway to assess risk to
12 human health and the environment. And that includes,
13 amongst other things, collecting data to characterize the
14 site conditions, assessing risk to human health, conducting
15 treatability testing as necessary, and also alternatives may
16 be evaluated, but must include a range of alternatives
17 described in NCP40, CFR, Section 300 --

11:09 18 *(Court reporter requests clarification for the*
19 *record.)*

11:09 20 THE COURT: NCP40 CFR, Section 300.430,
21 subsection (E).

11:09 22 -- and shall include remedial actions that use
23 permanent solutions and alternative treatment technologies
24 or resource recovery technologies to the maximum extent
25 practicable.

11:10 1 Initially settling defendants will perform a field
2 site investigation referred to as the "site investigation
3 area." This area consists of 34 residential properties
4 between the former Royal Boulevard landfill and the
5 intersection of South Vermont Avenue and Torrance Boulevard.
6 The area represents the estimated extent of the former
7 slough area where contamination stormwater would most likely
8 to have been deposited prior to installation of modern
9 infrastructure.

11:10 10 From my memory, though, you're actually conducting
11 54 sites. And eventually I need to understand where those
12 others are occurring besides these residential. And I'll
13 come back to that in a moment.

11:10 14 In committing to perform the sampling of all 34
15 residential parcels and the site, it's my understanding that
16 there's going to be, initially, one soil boring from the
17 ground surface down to depths -- taking soil samples -- and
18 you've set that out for the Court in depths .5, 2.5, 5.0,
19 7.5 and 10 feet below ground surface in 28 of the 34
20 parcels.

11:11 21 First question: I don't understand what's
22 happening with the other six parcels.

11:11 23 MS. GITIN: So in all 34 parcels, the sampling
24 will be done at the depths that you just described: From
25 0.5 feet below ground surface down to 10 feet below ground

1 surface.

11:11 2 In those last six parcels we will additionally --
3 uh, sorry. In 28 -- so in all 34 parcels that will occur.

11:12 4 THE COURT: Okay.

11:12 5 MS. GITIN: In 28 of the 34 parcels, additional
6 sampling will occur at greater depths. In the other six it
7 was deemed not necessary.

11:12 8 THE COURT: But with one boring?

11:12 9 MS. GITIN: Correct.

11:12 10 So the single boring takes samples from --

11:12 11 THE COURT: Later on --

11:12 12 MS. GITIN: -- each parcel there's one boring but
13 multiple samples.

11:12 14 THE COURT: Later on there'll be a concern about
15 the number of borings and the placement, which is why I want
16 this record.

11:12 17 You'll further sample at a depth of which native
18 Southern Pathway OU soils appear, whatever that depth may
19 be, in order to confirm full range depth at which the DDT
20 may've been deposited.

11:12 21 Are those that -- additional boring samples?

11:12 22 MS. GITIN: Correct.

11:12 23 THE COURT: Okay.

11:12 24 So, in addition, analyzing the soil, settling
25 defendants must also analyze any white material --

11:12 1

(Court reporter requests clarification for the
record.)

11:12 3

THE COURT: White, yeah. W-H-I-T-E.

11:12 4

-- material observed within the boring that could
be suspected to be DDT, regardless of the department at
which the white material occurs.

11:13 7

So let's say we get to 10 feet, we have white
material, does the boring then go deeper? In other words,
let's say we get to a layer of white material but our actual
document says 10 feet.

11:13 11

What do we do?

11:13 12

MS. GITIN: So I guess, Your Honor, it might
depend on where it was. If you found a white --

11:13 14

THE COURT: I just gave it you to. It's 10 feet
because right now your limitation is 10 feet. I didn't take
7.5 'cause I know you're going --

11:13 17

MS. GITIN: I see.

11:13 18

THE COURT: -- so I placed this in the position
now, hypothetically, 10 feet.

11:13 20

MS. GITIN: If we have data that suggests that
there's contamination, we will -- we will look further.

11:13 22

THE COURT: Okay.

11:13 23

That agreed to by all parties? Are we gonna look
further?

11:13 25

MR. RICHARDSON: The data reflects that, yes,

1 Your Honor.

11:13 2 THE COURT: Okay.

11:13 3 MS. GITIN: And we'd also, of course, test the
4 white material to see whether it's DDT or whether it's, you
5 know, anything else.

11:14 6 THE COURT: No. I understand. I just wanted to
7 take the worst projection I could think of. What happens if
8 we got to 10 feet, we had white material. I wanna make
9 certain we're not tied to a document that limits us to
10 10 feet.

11:14 11 MS. GITIN: That's correct.

11:14 12 THE COURT: Fair enough.

11:14 13 All right. Now, you're going to take initial
14 sampling of 198 soil samples from these 34 borings with five
15 to six samples per boring. You're gonna analyze them for
16 broad range of contaminates, and not only for DDT, which are
17 associated with operation'a the Montrose site, but for other
18 pesticides; and those include polychlorinated, P-O-L-Y,
19 C-H-L-O-R-I-N-A-T-E-D, biphenyls, B-I-P-H-E-N-Y-L-S, and for
20 volatile organic compounds and petroleum hydrocarbons.

11:15 21 Counsel, I understand that.

11:15 22 Okay. The investigation includes contaminants not
23 specifically listed with the Montrose site in order to
24 assess the nature and extent of contamination to human
25 health and environment.

11:15 1 So they're argue [sic] having that crossover from
2 the dual site -- is that what's occurring?

11:15 3 MS. GITIN: Or from anything else that may be in
4 the area.

11:15 5 THE COURT: All right.

11:15 6 Now, this is critical to me, and I think you have
7 my compliments. If, and only if, every one of these soil
8 samples tested -- and I want to state that again -- every
9 one of these soil samples tested, each of which is analyzed
10 for many contaminates, shows no contamination above certain
11 screening levels for any contaminant, which is end point
12 criteria, then fieldwork shall be deemed complete after
13 sampling analysis of the tested 198 soil samples is
14 complete.

11:16 15 That's absolutely clear to the Court. In a,
16 moment we're going to talk about where the boring occurs and
17 what the objections are concerning one boring per residence.

11:16 18 If any contamination above the end point criteria
19 is found in even one soil sample for DDT-related
20 contaminants or other specified contaminates, then EPA can
21 require settling defendants to continue the site
22 investigation, completing additional fieldwork to EPA's
23 satisfaction until the goals of the "RI" are met.

11:16 24 Does that also mean that, if we get to a depth of
25 10 feet again, that we would then extend deeper? Or would

1 we go lateral? Or are we simply waiting with all those
2 unknowns to try to ferret out what those unknowns are in the
3 future so we can get started and see what we've got?

11:17 4 That's really where we are, aren't we?

11:17 5 MS. GITIN: We --

11:17 6 THE COURT: In other words, let's get started.

7 See what we've finally got after 30 years.

11:17 8 MS. GITIN: Correct.

11:17 9 THE COURT: Okay.

11:17 10 MS. GITIN: We would go where the data would lead
11 us.

11:17 12 THE COURT: So the net present valuation of the
13 initial investigation's a little over \$500,000. \$518,000.

11:17 14 And, of course, CD, if I misstated, is to
15 recover -- or, I mean, in the Consent Decree there's gonna
16 be a recovery of \$3,750,000 for EPA and \$250,000 for DTSC in
17 previously unreimbursed response costs.

11:17 18 There's some other terms that are -- the settling
19 defendants received covenants not to sue from the
20 United States and DTSC only for those specified matters and
21 subject to various reservations of rights. So the legal
22 entry [sic] for entry of this judgment -- to repeat, 'cause
23 each document is separate, in and of itself, is --

11:18 24 "The standard for approval of a CERCLA
25 federal settlement is whether it is

1 reasonable, fair, and consistent with
2 the purposes that CERCLA is intended to
3 serve --"

11:18 4 As the Ninth Circuit has held in this very case,
5 *United States v. Montrose*, 50 F.3d 741, at 743,
6 Ninth Circuit (1995).

11:18 7 "-- and the approval of a settlement is
8 committed to the informed discretion of
9 the District Court. Such discretion
10 should be exercised in light of the
11 strong policy in favor of voluntary
12 settlement of litigation and CERCLA has
13 explicit provisions favoring
14 settlement."

11:18 15 The argument and representation is that the Court
16 should find this to be substantively fair because settling
17 defendants are making an open-ended commitment -- and I
18 repeat that -- an open-ended commitment to complete the
19 RIFI -- RIFS study regardless of its cost.

11:19 20 And the --

11:19 21 *(Court reporter requests clarification for the*
22 *record.)*

11:19 23 THE COURT: And the settling defendants are also
24 agreeing to pay the response costs that the Court just
25 stated. It's represented -- and I quote:

11:19 1 "This recovery is particularly robust
2 given the unusual procedure of the
3 previously set trial where plaintiff had
4 been required by the Court, then
5 Judge Klausner, to proceed to trial on
6 Southern Pathway OU liability and costs
7 before completing the Southern Pathway
8 OU investigation."

11:19 9 And apparently both parties feel that, obviously
10 from your standpoint, that before we ever got into
11 litigation, we need to go through this process first to see
12 what we have, to be informed.

11:20 13 There's representation that's procedurally fair
14 because it spanned three decades and over 3,000 docket
15 entries. And it seems to me that this is the first step
16 forward in a remedial fashion to alleviate and attempt to
17 alleviate these hazards.

11:20 18 Now, correct me if I'm wrong, because I know that
19 there's been monitoring. There's been some containment,
20 *et cetera*, some retrieval. But this seems to be a
21 tremendous leap forward by the parties.

11:20 22 MR. RICHARDSON: Yes, Your Honor.

11:20 23 THE COURT: All right. I think all parties' in
24 agreement.

11:20 25 Then I would need to find that the decrees' likely

1 a vehicle for cleansing the environment. And I need to
2 consider whether these adequately represent and compensate
3 the public for costs of response and remediation, of which
4 all parties are in agreement; and that the defense will
5 fully perform the RIFS regardless of extent or duration,
6 which I now have on the record, and will pay all agency
7 oversight costs, and must perform the investigation to EPA's
8 satisfaction, with concurrence of DTSC. You'll be guided by
9 the national contingency plan.

11:21 10 And the settling defendants' commitment to fully
11 perform the RIFS at their own expense --

11:21 12 *(Court reporter requests clarification for the*
13 *record.)*

11:21 14 THE COURT: -- own expense except for specifically
15 enumerated exceptions, is very favorable, given the
16 litigation posture for this portion of the site.

11:21 17 More importantly, this open-ended nature of the
18 investigation, unless specific endpoint criteria are met for
19 all DDT-related contaminates and all samples and the
20 consideration of all appropriate remedial and alternatives
21 in the feasibility study -- appears to this Court to protect
22 the public interest, the plaintiffs' interest in protecting
23 human health and the environment -- is consistent with
24 CERCLA.

11:22 25 So now I wanna turn to the comment section and

1 make certain that the Court has adequately and thoroughly
2 asked questions and is satisfied.

11:22 3 **COURT'S INQUIRY RE DAAC COMMENT RE SCOPE OF RI**

11:22 4 THE COURT: One comment letter was received from
5 Del Amo Action Committee. It states that they have concerns
6 about the scope of the RI.

11:22 7 First, Del Amo asked why 34 parcels, rather than
8 56, were included in the initial site investigation for the
9 RI.

11:22 10 Second, DAAC objects to the scope being narrowed
11 even further by requiring only one boring per yard with a
12 "step out" if they do detect a needle in the haystack.

11:23 13 The response from EPA is that they came to
14 their -- your decisions about the scope of the IR -- RI
15 through the application of technical expertise and review of
16 the existing plan after consultation with DTS and with
17 several offices. And such technical decision-making is
18 entitled to judicial deference.

11:23 19 Plaintiffs' provided specific responses to DAAC's
20 concerns about the scope.

11:23 21 When were those responses to Del Amo?

11:23 22 MS. GITIN: I think here we're just talking about
23 responses in the brief. We haven't engaged with Del Amo
24 specifically on their comments to this consent decree,
25 though EPA and the Del Amo Action Committee have fairly

1 frequent conversations about the site because we do believe
2 that --

11:24 3 THE COURT: I'm sorry. Would you repeat that? I
4 couldn't hear.

11:24 5 MS. GITIN: EPA and the Del Amo Action Committee
6 do have fairly frequent communications about the site,
7 whether in writing or on the phone, because they're an
8 entrusted community partner. And we talk to them when they
9 have concerns.

11:24 10 THE COURT: Give me an idea -- because I got
11 concerned with that, you know, brief hiatus when I saw it.

11:24 12 MS. GITIN: Sure. I know -- obviously, I don't
13 have a record of every phone call. I -- I do have -- we
14 have letters that were exchanged back and forth.

11:24 15 So, for instance, there's a letter from the
16 director of the superfund division at EPA Region 9 to the
17 Del Amo Action Committee, talking to them about various
18 community involvement concerns and telling them that, if
19 they ever want separate meetings beyond the public meetings,
20 that they can have them.

11:25 21 THE COURT: And when? That's what I'm uncertain
22 of.

11:25 23 MS. GITIN: That's in April 2021, I believe. Let
24 me doublecheck.

11:25 25 MR. RICHARDSON: Your Honor, I --

11:25 1 MS. GITIN: April 5th. April 5, 2021.

11:25 2 THE COURT: Okay. Thank you.

11:25 3 Counsel?

11:25 4 MR. RICHARDSON: I also believe there was a June

11:25 5 public meeting that involved this -- these issues as well.

11:25 6 THE COURT: So there's been a public meeting as

11:25 7 recently as June. And describe that public meeting. Was

11:25 8 Montrose present? EPA present? Was it located here in the

11:25 9 Los Angeles area? Was the community involved or invited?

11:25 10 MS. GITIN: Um, it was a virtual meeting this time

11:25 11 because of COVID. Normally they are held in person near the

11:25 12 site.

11:25 13 So every six months, um, going back quite a ways,

11:25 14 there are public meetings about the Montrose and Del Amo

11:25 15 sites.

11:25 16 THE COURT: But you switched to a virtual meeting

11:25 17 because of COVID?

11:25 18 MS. GITIN: Yes.

11:25 19 THE COURT: Okay.

11:25 20 MS. GITIN: And, in addition, Mr. Minor tells me

11:25 21 that we've been -- that EPA has been in phone conversations

11:25 22 with the Del Action -- Del Amo Action Committee in the last

11:25 23 couple of weeks.

11:26 24 THE COURT: Is that correct?

11:26 25 MR. MINOR: Yes.

11:26 1 THE COURT: Could you describe to me? I don't
2 need to know the comment. But use the microphone.

11:26 3 MS. GITIN: This is Mr. Minor.

11:26 4 THE COURT: I want to make sure that the parties
5 are truly notified.

11:26 6 MR. MINOR: Yes, um, um, Ms. Babich, from the
7 Del Amo Action Committee has had several -- or at least two
8 phone calls that I'm aware of --

11:26 9 *(Court reporter requests clarification for the*
10 *record.)*

11:26 11 THE COURT: At Region 9?

11:26 12 MR. MINOR: Yes, um, to talk about her concerns
13 about the site. And so there've been at least two phone
14 calls back from managers to discuss concerns with her in the
15 last few weeks.

11:26 16 THE COURT: And before I considered and asked
17 about administratively closing the case, it didn't make a
18 difference in terms of how the Court supervised it, but I'm
19 growing a little bit leery of that. I think I'm going to
20 reverse myself on that and keep the case open and active on
21 the file so that Del Amo understands that they have access
22 through you and through the Court; otherwise, that could be
23 misread as a closed case, which is silly. But folks aren't
24 lawyers. Okay?

11:27 25 So if any contamination found above the

1 conservative endpoint criteria, once again, you're going to
2 allow additional sampling to be performed elsewhere beyond
3 the 34 lots. I took that in my reading to mean that you
4 could also take another boring sample on one of those 34
5 lots; is that correct?

11:27 6 MS. GITIN: Yes. That's --

11:27 7 THE COURT: Okay.

11:27 8 MS. GITIN: -- something we could ask Montrose to
9 do if the -- the data warranted it.

11:27 10 THE COURT: Okay. All right.

11:27 11 And so that might resolve what I call the overlap
12 problem that Del Amo raised; and that is, what happens if
13 you're just getting a corner of the contamination.

11:28 14 The next is that there was a disagreement that
15 taking one boring --

11:28 16 *(Court reporter requests clarification for the*
17 *record.)*

11:28 18 THE COURT: -- per yard might somehow miss all
19 contamination within the site investigation area and produce
20 a false negative.

11:28 21 First, you pointed to the depth again. That
22 wasn't really their question. But you pointed to five
23 samples from each boring.

11:28 24 But second, the likelihood of a false negative is
25 greatly lessened by the structure of the endpoint criteria.

1 You've told me that it is only if no contamination -- I
2 repeat that -- no contamination above these criteria is
3 found in any of the initial approximately 198 samples
4 throughout the initial site investigation area that the
5 investigations will be limited to just those samples.

11:29 6 So if you find even one contamination, what do you
7 do? -- or you do then go back to your experts at that time,
8 and we don't try to define it at this time, and that's where
9 the interplay comes in? And that's where I would expect to
10 see Del Amo come into my court and want, you know,
11 additional borings or additional sites and there might be a
12 contention.

11:29 13 Is that your understanding?

11:29 14 MS. GITIN: I don't think there would likely be a
15 contention, Your Honor. If -- if the data suggests that
16 additional sampling is necessary, we'll ask Montrose to do
17 it. And by "ask," I don't mean ask politely. They're
18 required by the Statement of Work for this consent degree to
19 do it. It really is the agency's decision. And if we find
20 contamination --

11:29 21 THE COURT: Sure.

11:29 22 MS. GITIN: -- we will ask them to look further.

11:30 23 THE COURT: And the point is, if there's a
24 disagreement, they have always got accessibility --

11:30 25 MS. GITIN: Correct.

11:30 1 THE COURT: -- to the Court.

11:30 2 MS. GITIN: They can come to us.

11:30 3 THE COURT: EPA first, of course, but back to the

4 Court.

11:30 5 MS. GITIN: I'm not sure what they're standing --

11:30 6 THE COURT: Well, let's --

11:30 7 *(Simultaneous speaking.)*

11:30 8 MS. GITIN: I can -- yeah.

11:30 9 THE COURT: Yeah. That's what I'm exploring. I

10 want to make certain that Del Amo has the feeling that all

11 decision-making starts -- stops, if I sign the consent

12 decree, they have no access in the future, that everything

13 is then governed by EPA and the parties.

11:30 14 If there's a continuing dispute, then I need to

15 know that there's some accessibility back to EPA to begin

16 with --

11:30 17 MS. GITIN: Uh-huh.

11:30 18 THE COURT: -- obviously. But I don't want that

19 that --

11:30 20 MS. GITIN: So --

11:30 21 THE COURT: -- to be a complete cutoff.

11:30 22 MS. GITIN: -- you have continuing jurisdiction

23 over these consent decrees.

11:31 24 THE COURT: It makes no difference whether it's a

25 closure administratively or I keep it active.

11:31 1 MS. GITIN: That is correct.

11:31 2 THE COURT: I prefer just to keep it active.

11:31 3 MS. GITIN: And there's a dispute resolution

4 provision within the consent decree that, if there's a

5 dispute among the parties, that it would be handled first

6 informally and then, if needed, brought to the Court's

7 attention.

11:31 8 THE COURT: Excellent. That gives me, I think,

9 the guarantee, and I think that gives them the

10 accessibility. All right. Then --

11:31 11 MS. GITIN: And we agree that administratively

12 closing the case would have no preclusion in that regard.

13 Your jurisdiction is what the consent decree says it is.

11:31 14 THE COURT: It could be misread. So keeping it

15 active may be more appropriate.

11:31 16 And finally, I wanna make certain, and I think

17 it's clear, that if any one soil sample at any depth shows

18 contamination above this endpoint criteria, then the

19 investigation may not be limited to that initial sampling.

11:32 20 Correct?

11:32 21 MR. RICHARDSON: Correct, Your Honor.

11:32 22 THE COURT: Okay.

11:32 23 MR. RICHARDSON: I believe that the -- that's when

24 it goes back to the experts on both -- both sides, and they

25 look at the multiple lines of evidence, including chemistry

1 data, geology, the location -- they compile all that
2 multiple lines of evidence and then EPA decides whether we
3 proceed with additional work.

11:32 4 THE COURT: Yeah. The next one is access. And I
5 was curious, and that is, DAAC's concerns about what would
6 happen in the event a resident refuses sampling.

11:32 7 I was somewhat baffled. First of all, I couldn't
8 imagine a resident refusing sampling when it's a remedial
9 effort of this extent --

11:32 10 MS. GITIN: It's certainly --

11:32 11 THE COURT: -- to alleviate --

11:32 12 *(Simultaneous speaking.)*

11:32 13 THE COURT: -- and second, if that occurred, we'll
14 deal with that at the time. I have no resolution for that,
15 and I think that's a parade of horribles that we need to
16 wait to see if it occurs. I just can't imagine why a
17 resident would say, "I don't want soil sampling."

11:33 18 MR. RICHARDSON: Your Honor, I think that's right.
19 And there are alternatives. If -- if a resident refuses
20 sampling, we may able'a sample in the street by that
21 resident's home --

11:33 22 THE COURT: Okay.

11:33 23 MR. RICHARDSON: -- or another public
24 right-of-way. But you're right: That -- that's an issue
25 that's addressed at the time or actually --

11:33 1 THE COURT: And let's say you had a contamination,
2 a small contamination zone between two residences. Let's
3 say that you did a boring on property one, and you picked up
4 contamination and it seemed to be, as you traced it, going
5 toward property two, but property two refused. You'd still
6 have a pretty good idea of that flow.

11:33 7 And about that time I would have to really wonder
8 why property two wouldn't be giving consent, knowing of
9 that. So I think we need to lay that aside as a worse case
10 scenario that shouldn't hold up, uh, this decree.

11:34 11 **COURT'S INQUIRY RE RI WORK PLAN**

11:34 12 THE COURT: The next comment was that there --
13 Del Amo's asking that the RI work plan include
14 Kenwood Avenue, the ECI property, the seven adjacent
15 propers [sic] to ECI, and the Royal Boulevard landfill,
16 regardless of who pays.

11:34 17 And the response was:

11:34 18 "The RIFS does not require settling
19 defendants to incorporate the
20 findings" --

11:34 21 *(Court reporter requests clarification for the
22 record.)*

11:34 23 MS. GITIN: And, actually, Your Honor --

11:34 24 THE COURT: Now, just -- just --

11:34 25 MS. GITIN: -- RIFS does require.

11:34 1 I believe you said "does not." But the RIFS does
2 require settling defendants, *et cetera*.

11:34 3 THE COURT: Oh, did I say "does not"? My
4 apologies.

11:35 5 The RIFS does require, yeah, settling defendants
6 to incorporate the findings of the ECI property and the
7 seven adjacent residential properties.

11:35 8 Thank you very much for correcting me.

11:35 9 MS. GITIN: Thank you, Your Honor.

11:35 10 THE COURT: That's -- and where the EPA's
11 performed or overseen extensive samplings, as well as
12 samplings previously done at the Royal Boulevard landfill.

11:35 13 And, apparently, the RI work plan for the Southern
14 Pathway does not include Kenwood Avenue because
15 Kenwood Avenue is not within the OU; is that correct?

11:35 16 MS. GITIN: (No response.)

11:35 17 THE COURT: I wanna apologize. I don't
18 understand.

11:35 19 Why wasn't it? -- not that it should be. Was it
20 prior studies that were done?

11:35 21 MS. GITIN: It's just a different portion of the
22 site, so it's not part of this investigation. It is -- it
23 is being handled elsewhere at a different portion of the
24 site.

11:35 25 THE COURT: But is it being handled?

11:35 1 MR. RICHARDSON: It has been handled, Your Honor.

2 So there was a consent decree in this case for that area,

3 and EPA actually did remediate that area already, to my

4 knowledge.

11:36 5 THE COURT: Okay. So EPA's already remediated.

6 Excellent.

11:36 7 MS. GITIN: Yes. There's been a removal action to

8 protect the public at that area.

11:36 9 THE COURT: Okay.

11:36 10 So DAAC asks, in the next comment, that EPA not

11 limit the feasibility study. And the plaintiffs have agreed

12 that the FS should not be limited, that the FS will look at

13 appropriate cleanup options. And the section of EPA's RIFS

14 guidance that is cited in the Statement of Work merely says

15 that:

11:36 16 "For high volume, low concentration

17 waste, if treatment technologies are not

18 practicable, then evaluation of

19 alternatives in an FS may focus

20 primarily on various containment

21 options; in other words, if a particular

22 technology is truly not feasible, the FS

23 may focus primarily elsewhere."

11:36 24 I don't understand that.

11:37 25 MS. GITIN: So I think that the commenters may've

1 been concerned that a statement was something broader than
2 it was.

11:37 3 All we said in the area that they cite is that
4 if -- we cited to guidance that says that the feasibility
5 study may focus on technologies that are feasible. It's a
6 bit of a tautology. If something has been determined not to
7 be feasible, then the feasibility study can focus primarily
8 on technologies that have been determined to be feasible.

11:37 9 THE COURT: Okay.

11:37 10 **COURT'S INQUIRY RE RISK ASSESSMENT**

11:37 11 THE COURT: Then the next comment states that the
12 RIFS should reassess previously completed ecological risk
13 assessments from the 1992 to 2008 time period.

11:37 14 The response is that plaintiffs' agree that the
15 RIFS should review and incorporate previously completed
16 health and ecological risk assessments for the Southern
17 Pathway.

11:38 18 Is there any other inquiry I should be making? I
19 think that that satisfies the comment.

11:38 20 The next comment is that the -- Del Amo also
21 raises concern about the public's opportunity to understand
22 the --

11:38 23 *(Court reporter requests clarification for the
24 record.)*

11:38 25 THE COURT: Del Amo also raises concerns about the

1 public's opportunity to understand the past investigations
2 at this "OI," and about residents' ability to understand the
3 context of whether to consent to sampling in their yards.

11:38 4 As long as you had these ongoing discretions and
5 transparency, then hopefully -- this is extraordinarily
6 complicated area -- those who are representing Del Amo, then
7 are conveying this information to their constituents.

11:39 8 *(Live switch to CourtSmart system at 11:39 a.m.)*

11:39 9 *(Further proceedings recorded with to CourtSmart
10 system, to be transcribed separately in Volume II.)*

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11:39 3 CERTIFICATE

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11:39 5 I hereby certify that pursuant to Section 753,

6 Title 28, United States Code, the foregoing is a true and

7 correct transcript of the stenographically reported

8 proceedings held telephone in the above-entitled matter and

9 that the transcript page format is in conformance with the

10 regulations of the Judicial Conference of the United States.

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11:39 12 Date: October 26, 2021

11:39 13

11:39 14

11:39 15 /s/ Debbie Gale

11:39 16

DEBBIE GALE, U.S. COURT REPORTER

11:39 17 CSR NO. 9472, RPR, CCRR

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